UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

KI BURKE, on behalf of herself, all others similarly situated, and the general public, Plaintiff, v. MG WELLINGTON, LLC, d/b/a KIDFRESH, Defendant.	Case No: 16-cv-2968 **CLASS ACTION COMPLAINT** DEMAND FOR JURY TRIAL

Plaintiff Ki Burke, on behalf of herself, all others similarly situated, and the general public, by and through her undersigned counsel, hereby sues defendant MG Wellington, LLC, doing business as Kidfresh ("Kidfresh"), and alleges the following upon her own knowledge, or where she lacks personal knowledge, upon information and belief, including through the investigation of her counsel.

NATURE OF THE ACTION

1. Kidfresh misleadingly markets a line of high-fat frozen food products as being healthy despite that the products are classic junk foods that are actually *unhealthy*. Kidfresh's labeling and advertising of the high-fat frozen foods also violates several federal and state food regulations.

2. Plaintiff relied upon Kidfresh's misleading and unlawful claims when purchasing the Kidfresh high-fat frozen foods, and was damaged as a result.

3. Ms. Burke brings this action on behalf of herself and a nationwide class of similarly situated consumers alleging violations of the New York Unfair and Deceptive Business Practices Law, N.Y. Gen. Bus. L. § 349 ("UDBP"), violations of the New York False Advertising Law, N.Y. Gen. Bus. L. § 350 ("NY FAL"), intentional and negligent misrepresentation, breach of express warranty under New York law, restitution, and unjust enrichment.

4. In addition, plaintiff brings this action on behalf of herself and a sub-class of similarly-situated California consumers, alleging violations of the California Consumer Legal Remedies Act, Cal. Civ. Code §§ 1750 *et seq*. ("CLRA"), the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200 *et seq*. ("UCL"), and the California False Advertising Law, *id.* §§ 17500 *et seq*. ("CA FAL"). Plaintiff further alleges that Kidfresh breached express and implied warranties under California law.

5. Plaintiff seeks an order, *inter alia*, compelling Kidfresh to (a) cease marketing its high-fat frozen foods using the misleading and unlawful tactics complained of herein, (b) destroy all misleading, deceptive, and unlawful materials, (c) conduct a corrective advertising campaign, (d) restore the amounts by which it has been unjustly enriched, and (e) pay restitution, damages, and punitive damages as allowed by law.

PARTIES

6. Plaintiff Ki Burke is a resident of San Pedro, California.

7. Defendant MG Wellington, LLC, is a Delaware limited liability company, with its principal place of business at 315 Fifth Avenue, New York, New York 10016. Defendant operates and does business under the fictitious business name, Kidfresh, for which it owns several trademarks.

JURISDICTION AND VENUE

8. This Court has jurisdiction over this action pursuant to the Class Action Fairness Act, 28 U.S.C. § 1332(d)(2)(A), because the matter in controversy exceeds the sum or value of $5,000,000 in aggregate, exclusive of interest and costs, and at least one member of the class of plaintiffs is a citizen of a state different from Kidfresh. In addition, more than two-thirds of the members of the class reside in states other than the state in which Kidfresh is a citizen and in which this case is filed, and therefore any exceptions to jurisdiction under 28 U.S.C. § 1332(d) do not apply.

9. The Court has personal jurisdiction over Kidfresh because Kidfresh has its principal place of business in New York, New York, which is within this judicial district. Further, Kidfresh advertised, marketed, distributed, offered for sale, and sold its high-fat

frozen foods to consumers in New York and conducts a substantial amount of business in New York County, in New York, and throughout the United States.

10. Venue is proper in this judicial district pursuant to 28 U.S.C. 1391, because defendant resides and has its principle place of business in this district, and a substantial portion of the acts forming the basis for the claims occurred in this district.

FACTS

I. Saturated Fat Consumption Increases the Risk of Cardiovascular Disease and Other Morbidity

A. The Role of Cholesterol in the Human Body

11. Cholesterol is a waxy, fat-like substance found in the body's cell walls. The body uses cholesterol to make hormones, bile acids, vitamin D, and other substances. The body synthesizes all the cholesterol it needs, which circulates in the bloodstream in packages called lipoproteins, of which there are two main kinds—low density lipoproteins, or LDL cholesterol, and high density lipoproteins, or HDL cholesterol.

12. LDL cholesterol is sometimes called "bad" cholesterol because it carries cholesterol to tissues, including the arteries. Most cholesterol in the blood is LDL cholesterol.

13. HDL cholesterol is sometimes called "good" cholesterol because it takes excess cholesterol away from tissues to the liver, where it is removed from the body.

B. High Total and LDL Blood Cholesterol Levels are Associated with Increased Risk of Morbidity, Including Coronary Heart Disease and Stroke

14. Total and LDL cholesterol blood levels are two of the most important risk factors in predicting CHD, with higher total and LDL cholesterol levels associated with increased risk of CHD.[1]

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[1] *See, e.g.*, Dr. Dustin Randolph, *Coconut Oil Increases Cardiovascular Disease Risk and Possible Death Due to Heart Attacks and Stroke* (Sept. 19, 2015) ("Heart attack and stroke risk can be largely predicted based on total and LDL cholesterol levels in people" because "as cholesterol levels increase so does one's risk of symptomatic and deadly heart disease."), *available at* http://www.pursueahealthyyou.com/2015/04/coconut-oil-increases-cardiovascular.html.

15. High LDL cholesterol levels are dangerous because "[e]levated blood LDL cholesterol increases atherosclerotic lipid accumulation in blood vessels."[2] That is, if there is too much cholesterol in the blood, some of the excess may become trapped along artery walls. Built up formations of cholesterol on arteries and blood vessels are called plaque. Plaque narrows vessels and makes them less flexible, a condition called atherosclerosis.

16. This process can happen to the coronary arteries in the heart and restricts the provision of oxygen and nutrients to the heart, causing chest pain or angina.

17. When atherosclerosis affects the coronary arteries, the condition is called coronary heart disease (CHD).

18. Cholesterol-rich plaques can also burst, causing a blood clot to form over the plaque, blocking blood flow through arteries, which in turn can cause an often-deadly or debilitating heart attack or stroke.

19. Thus, "[f]or the health of your heart, lowering your LDL cholesterol is the single most important thing to do."[3]

C. Saturated Fat Consumption Causes Increased Total and LDL Blood Cholesterol Levels, Increasing the Risk of CHD and Stroke

20. The consumption of saturated fat negatively affects blood cholesterol levels because the body reacts to saturated fat by producing cholesterol. More specifically, saturated fat consumption causes coronary heart disease by, among other things, "increas[ing] total cholesterol and low density lipoprotein (LDL) cholesterol."[4]

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[2] USDA Center for Nutrition Policy and Promotion, *Dietary Saturated Fat and Cardiovascular Health: A Review of the Evidence*, Nutrition Insight 44 (July 2011) [hereinafter, "USDA, Review of the Evidence"], *available at* http://www.cnpp.usda.gov/sites/default/files/nutrition_insights_uploads/Insight44.pdf.

[3] Pritikin Longevity Center, *Is Coconut Oil Bad for You?*, *available at* https://www.pritikin.com/your-health/healthy-living/eating-right/1790-is-coconut-oil-bad-for-you.html.

[4] USDA Review of the Evidence, *supra* n.2.

21. Moreover, "[t]here is a positive linear trend between total saturated fatty acid intake and total and low density lipoprotein (LDL) cholesterol concentration and increased risk of coronary heart disease (CHD)."[5]

22. This linear relationship between saturated fat intake and risk of coronary heart disease is well established and accepted in the scientific community.

23. For example, the Institute of Medicine's Dietary Guidelines Advisory Committee "concluded there is strong evidence that dietary [saturated fatty acids] SFA increase serum total and LDL cholesterol and are associated with increased risk of [cardiovascular disease] CVD."[6]

24. In addition, "[s]everal hundred studies have been conducted to assess the effect of saturated fatty acids on serum cholesterol concentration. In general, the higher the intake of saturated fatty acids, the higher the serum total and low density lipoprotein (LDL) cholesterol concentrations."[7]

25. Importantly, there is "no safe level" of saturated fat intake because "any incremental increase in saturated fatty acid intake increases CHD risk."[8]

26. For this reason, while the Institute of Medicine sets tolerable upper intake levels (UL) for the highest level of daily nutrient intake that is likely to pose no risk of adverse health effects to almost all individuals in the general population, "[a] UL is not set for saturated fatty acids."[9]

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[5] Institute of Medicine, *Dietary Reference Intakes for Energy, Carbohydrate, Fiber, Fat, Fatty Acids, Cholesterol, Protein, and Amino Acids*, at 422 (2005) [hereinafter "IOM, Dietary Reference Intakes"], *available at* http://www.nap.edu/catalog.php?record_id=10490.

[6] USDA Review of the Evidence, *supra* n.2.

[7] IOM, Dietary Reference Intakes, *supra* n.5, at 481.

[8] *Id.* at 422.

[9] *Id.*

27. In addition, "[t]here is no evidence to indicate that saturated fatty acids are essential in the diet or have a beneficial role in the prevention of chronic diseases."[10]

28. Further, it is generally accepted that a reduction in the intake of saturated fatty acids will lower TC total cholesterol and LDL-cholesterol.[11]

29. For these reasons, "reduction in SFA intake has been a key component of dietary recommendations to reduce risk of CVD."[12]

30. The Institute of Medicine's Dietary Guidelines for Americans, for example, "recommend reducing SFA intake to less than 10 percent of calories."[13] And "lowering the percentage of calories from dietary SFA to 7 percent can further reduce the risk of CVD."[14]

31. In short, consuming saturated fat increases the risk of CHD and stroke.[15]

II. Saturated Fat Consumption Increases Risk of Cardiovascular Disease and other Serious Morbidity in Children

32. Not only is cardiovascular disease the number 1 cause of death in the United States, "[i]t is clear that risk factors for atherosclerotic CVD can develop during childhood and adolescence."[16]

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[10] *Id.* at 460.

[11] *See, e.g.*, Vie A. Mustad et al., *Reducing saturated fat intake is associated with increased levels of LDL receptors on mononuclear cells in healthy men and women*, 38 J. Lipid Research 459, 459 (1997), Patty W. Siri-Tarino et al., *Saturated Fatty Acids and Risk of Coronary Heart Disease: Modulation by Replacement Nutrients*, 12 Curr. Atheroscler. Rep. 384, 384 (2010).

[12] USDA Review of the Evidence, *supra* n.2.

[13] *Id.*

[14] *Id.*

[15] *See* Patty W. Siri-Tarino et al., *Saturated Fatty Acids and Risk of Coronary Heart Disease: Modulation by Replacement Nutrients*, 12 Curr. Atheroscler. Rep. 384, 384 (2010).

[16] Stephen R. Daniels et al, *Reduction of Risk for Cardiovascular Disease in Children and Adolescents*, 124 Circulation 1673, 1673 (2011).

33. The Bogalusa Heart Study, which began tracking more than 16,000 subject in 1973 provided concrete evidence that fatty buildup begins forming in the aorta in the first decade of life. Further, these "early atherosclerotic lesions (fatty streaks) and advanced lesions (fibrous plaques) are significantly related to elevations in TC [total cholesterol], LDL-C[holesterol], and non–HDL-C[holesterol] and low levels of HDL-C[holesterol]"[17]

34. Likewise the Muscatine Heart Study, designed to examine risk factors for cardiovascular disease in school age children, found that considerable number of school-age children have risk factors that are predictive of heart disease in adults, including: high blood pressure, high body mass index, high blood cholesterol.

35. Thus, "[t]here is a pressing need for US children to achieve healthy eating . . . and reduce the risk of future health problems" and "[c]ritical nutrition concerns about US children include excessive intakes of dietary fat, especially saturated fats" [18]

III. Kidfresh's Manufacture, Marketing, and Sale of the High-Fat Frozen Food Products

A. Kidfresh's History and Sale of Children's Foods

36. Since 2007, defendant has manufactured, marketed, and sold a line of food products specifically aimed at children and parents, under the trademark "Kidfresh."

37. Currently, Kidfresh products are sold nationally at major supermarket and retail chains such as Whole Foods Market, Target, Kroger, Ralphs, Stater Bros., H.E.B., Stop & Shop, ShopRite, and many others. In fact, Kidfresh boasts, "Our products are available in 7,000 stores nationwide!"[19]

38. In addition, Kidfresh sells its products online through Amazon.com, Foodservicedirect.com, and other websites.

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[17] *Id.* at 1679.

[18] American Dietetic Association, *Position of the American Dietetic Association: Nutrition Guidance for Healthy Children Ages 2 to 11 Years*, 108 J. Am. Diet Assoc. 1038, 1038 (2008).

[19] Kidfresh, Find a Store, http://www.kidfresh.com/find-a-store.

39. The Kidfresh high-fat frozen foods challenged in this lawsuit include at least the following: Kidfresh Wagon Wheels Mac + Cheese; Kidfresh Muy Cheesy Quesadillas; Kidfresh Super Duper Chicken Nuggets; and Kidfresh Mamma Mia Cheesy Pizza.

B. The Composition of the High-Fat Kidfresh Frozen Foods

40. The products challenged here are classic junk foods—pizza, macaroni and cheese, quesadillas, and chicken nuggets—that defendant nevertheless markets and advertises as healthy.

41. As pictured below in the Nutrition Facts box on the Kidfresh Wagon Wheels Mac + Cheese product, each 180 gram serving of Kidfresh Wagon Wheels Mac + Cheese contains 270 calories, 80 of which are from fat. Further, each 180 gram serving contains 9 grams of total fat and 5 grams of saturated fat.

Nutrition Facts

Serving Size 1 Entrée (180g)
Servings Per Container 1

Amount Per Serving	
Calories 270	Calories from Fat 80
	% Daily Value*
Total Fat 9g	**14%**
Saturated Fat 5g	**25%**
Trans Fat 0g	
Cholesterol 25mg	**8%**
Sodium 360mg	**15%**
Total Carbohydrate 35g	**12%**
Dietary Fiber 2g	**8%**
Sugars 4g	
Protein 12g	**24%**

Vitamin A	30%	Vitamin C	0%
Calcium	20%	Iron	4%

* Percent Daily Values are based on a 2,000 calorie diet. Your Daily Values may be higher or lower depending on your calorie needs.

	Calories	2,000	2,500
Total Fat	Less than	65g	80g
Saturated Fat	Less than	20g	25g
Cholesterol	Less than	300mg	300mg
Sodium	Less than	2,400mg	2,400mg
Total Carbohydrate		300g	375g
Dietary Fiber		25g	30g

42. As pictured below in the Nutrition Facts box on the Kidfresh Muy Cheesy Quesadillas, each serving of two quesadillas contains 250 calories, 100 of which are from fat. Further, each 120 gram serving contains 11 grams of total fat and 4 grams of saturated fat.

Nutrition Facts

Serving Size 2 Quesadillas (120g)
Servings Per Container 1

Amount Per Serving

Calories 250	Calories from Fat 100
	% Daily Value*
Total Fat 11g	**17%**
Saturated Fat 4g	**20%**
Trans Fat 0g	
Cholesterol 25mg	**9%**
Sodium 310mg	**13%**
Total Carbohydrate 31g	**10%**
Dietary Fiber 0g	**0%**
Sugars 1g	
Protein 11g	**22%**

Vitamin A	20%	Vitamin C	0%
Calcium	15%	Iron	15%

* Percent Daily Values are based on a 2,000 calorie diet. Your Daily Values may be higher or lower depending on your calorie needs.

	Calories	2,000	2,500
Total Fat	Less than	65g	80g
Saturated Fat	Less than	20g	25g
Cholesterol	Less than	300mg	300mg
Sodium	Less than	2,400mg	2,400mg
Total Carbohydrate		300g	375g
Dietary Fiber		25g	30g

43. A pictured below in the Nutrition Facts box on Mamma Mia Cheesy Pizza, each pizza contains 260 calories, 60 of which are from fat. Further, each 116 gram serving contains 7 grams of total fat and 2.5 grams of saturated fat.

Nutrition Facts

Serving Size 1 Pizza (116g)
Servings Per Container 2

Amount Per Serving

Calories 260	Calories from Fat 60
	% Daily Value*
Total Fat 7g	**11%**
Saturated Fat 2.5g	**13%**
Trans Fat 0g	
Cholesterol 10mg	**3%**
Sodium 340mg	**14%**
Total Carbohydrate 37g	**12%**
Dietary Fiber 4g	**16%**
Sugars 4g	
Protein 13g	**26%**

Vitamin A	10%	Vitamin C	4%
Calcium	20%	Iron	10%

* Percent Daily Values are based on a 2,000 calorie diet. Your Daily Values may be higher or lower depending on your calorie needs.

	Calories	2,000	2,500
Total Fat	Less than	65g	80g
Saturated Fat	Less than	20g	25g
Cholesterol	Less than	300mg	300mg
Sodium	Less than	2,400mg	2,400mg

44. As pictured below in the Nutrition Facts box on the Kidfresh Super Duper Chicken Nuggets, each five-nugget serving contains 130 calories, 35 of which are from fat. Further, each 80 gram serving contains 4 grams of total fat and 0.5 grams of saturated fat.

Nutrition Facts

Serving Size 5 Nuggets (80g)
Servings Per Container about 2.5

Amount Per Serving	
Calories 130	Calories from Fat 35
	% Daily Value*
Total Fat 4g	6%
Saturated Fat 0.5g	3%
Trans Fat 0g	
Cholesterol 30mg	10%
Sodium 250mg	10%
Total Carbohydrate 13g	4%
Dietary Fiber 2g	8%
Sugars 0g	
Protein 12g	24%

Vitamin A	0%	Vitamin C	4%
Calcium	0%	Iron	6%

* Percent Daily Values are based on a 2,000 calorie diet. Your Daily Values may be higher or lower depending on your calorie needs.

	Calories	2,000	2,500
Total Fat	Less than	65g	80g
Saturated Fat	Less than	20g	25g
Cholesterol	Less than	300mg	300mg
Sodium	Less than	2,400mg	2,400mg
Total Carbohydrate		300g	375g
Dietary Fiber		25g	30g

C. Kidfresh Markets the High-Fat Frozen Foods with Misleading Health and Wellness Claims

45. Consumers are generally willing to pay more for foods they perceive as being healthy. For instance, Nielsen's 2015 Global Health & Wellness Survey found that "88% of those polled are willing to pay more for healthier foods."

46. This is especially true of parents. In fact, "Two-thirds of parents worry more about the healthfulness of their children's diets than their own."[20]

47. Kidfresh is well aware of consumer and parent preference for healthful foods, and therefore employs and has employed a strategic marketing campaign intended to convince consumers that its high-fat foods are actually "healthy."

[20] International Food Information Council Foundation, *2012 Food & Health Survey: Consumer Attitudes toward Food Safety, Nutrition and Health*, *available at* http://www.foodinsight.org/2012_Food_Health_Survey_Consumer_Attitudes_toward_Food_Safety_Nutrition_and_Health.

48. Defendant has employed and continues to employ a health-based marketing campaign intended to convince parents that its Kidfresh products are a healthy and wise choice for their children.

49. Defendant specifically targets child-friendly, health-conscious parents by claiming to provide "Healthy Frozen Kid's Meals."[21]

50. However, the High-Fat Frozen Foods challenged in this suit—pizza, chicken nuggets, mac & cheese, and quesadillas—are nothing more than classic junk foods now being touted by Kidfresh as healthy.

51. To distract parents from the fact that the High-Fat Frozen Foods are really junk foods, Kidfresh consistently uses a number of marketing tactics to appeal to parents that "want to feed [their] kids healthy food."[22]

52. For example, to evoke an aura of trustworthiness, defendant claims to be a company driven by "passion for children and healthy foods."[23]

53. To reinforce the perception that Kidfresh products are the "healthy kids' meal solution," defendant repeatedly claims that Kidfresh products are "approved by a pediatric nutritionist."[24]

54. In addition, defendant cleverly creates a false dilemma, to which it conveniently offers a solution, by playing on the common misperception that "kids won't eat vegetables." More specifically, defendant repeatedly states that "Because most children don't eat enough vegetables, each of our fresh frozen meals are full of hidden veggies," and promises that "with Kidfresh, no more mealtime drama with our healthy and convenient kids meals."

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[21] Kidfresh, Our Products, http://www.kidfresh.com/our-products.

[22] Kidfresh, Our Promise, http://www.kidfresh.com/our-promise.

[23] Kidfresh, About Us, http://www.kidfresh.com/about-us/meet-our-team/matt-cohen.

[24] Kidfresh, Frequently Asked Questions, http://www.kidfresh.com/faq.

55. Kidfresh's comprehensive health-based marketing campaign employs a variety of platforms and mediums including health claims placed directly on the labels and packaging of the High-Fat Frozen Foods, as well as online advertisements and promotions.

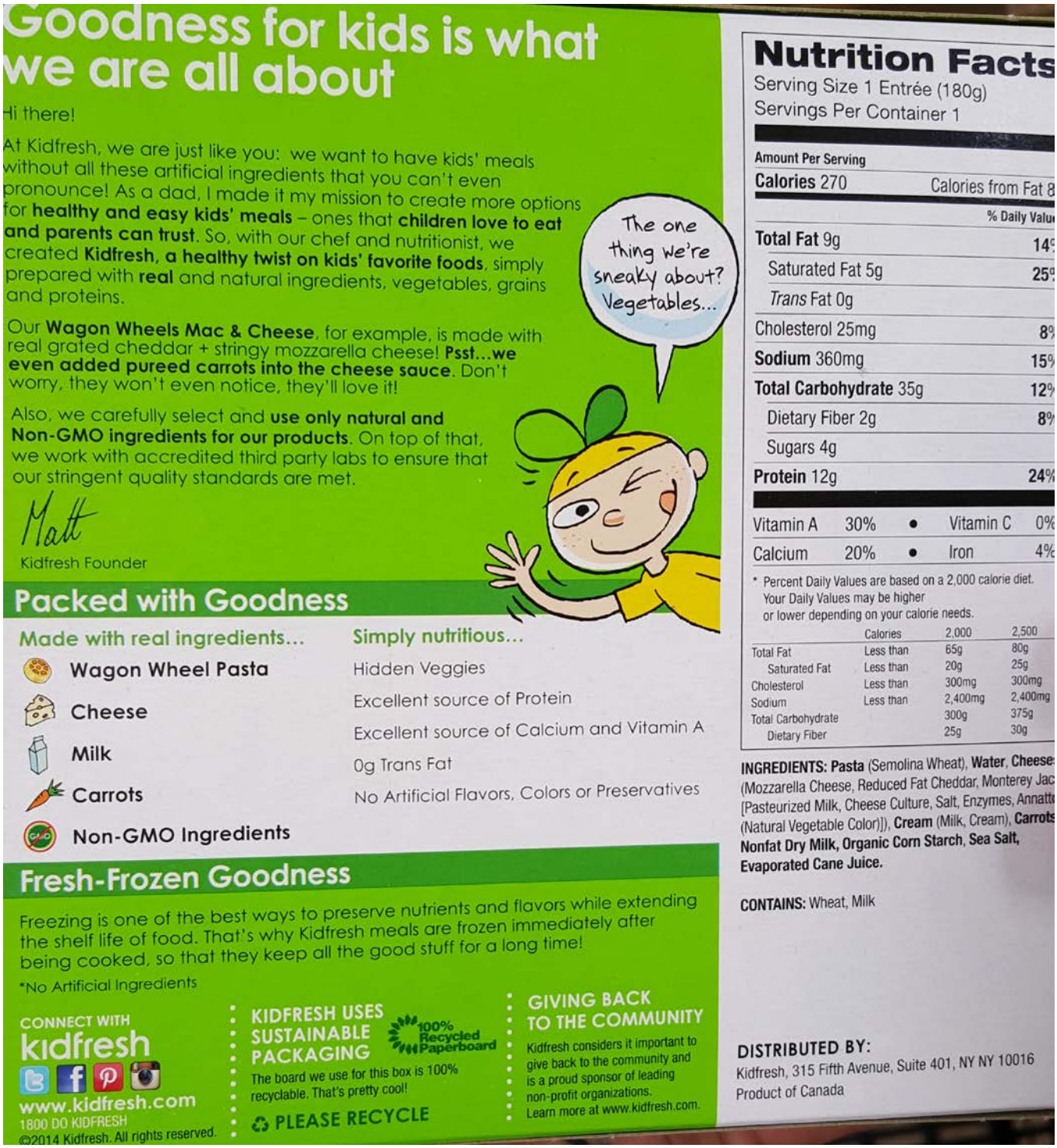
D. The Labels of the Kidfresh High-Fat Frozen Foods Bear Misleading Health and Nutrition Claims

56. Through statements placed directly on the labels of its high-fat products, Kidfresh markets and advertises the products as healthy, even though the products' total and saturated fat content render them unhealthy. Moreover, Kidfresh's labeling claims are designed to conceal or distract consumers from noticing that its products contain unhealthy levels of total and saturated fat.

57. As shown below, the misleading claims that defendant places on the challenged products are nearly identical, and the label of each product delivers the same concrete, health-based message that is specifically intended to induce consumers to purchase the products.

1. Kidfresh places misleading health and nutrition claims on the label of its Wagon Wheels Mac + Cheese product

58. Below are exemplars of the front and back of a Kidfresh Wagon Wheels Mac + Cheese product label.



59. Kidfresh prominently labels its Wagon Wheels Mac + Cheese product with the phrase, "Goodness for kids is what we are all about." This claim, taken individually and in context of the label as a whole, is false and misleading because Kidfresh Wagon Wheels Mac + Cheese is unhealthy due to its high total and saturated fat content.

60. Kidfresh further misleads consumers regarding the healthfulness of its Wagon Wheels Mac + Cheese product by claiming:

> At Kidfresh, we are just like you: we want to have kids' meals without all these artificial ingredients that you can't even pronounce! As a dad, I made it my mission to create more options for **healthy and easy kids' meals** – ones that **children love to eat and parents can trust**. So, with our chef and nutritionist, we created **Kidfresh, a healthy twist on kids' favorite foods**, simply prepared with real and natural ingredients, vegetables, grains and proteins.

(emphasis in original). These statements, which appear directly on the Wagon Wheels Mac + Cheese label, taken individually and in context of the label as a whole, are false and misleading because the product is actually unhealthy due to its high total and saturated fat content.

61. To reinforce this misleading health message, Kidfresh states that:

> Our **Wagon Wheels Mac & Cheese**, for example, is made with real grated cheddar + stringy mozzarella cheese! **Psst…we even added pureed carrots into the cheese sauce.** Don't worry, they won't even notice, they'll love it! Also, we carefully select and **use only natural and non-GMO ingredients for our products.** On top of that, we work with accredited third-party labs to ensure that our stringent quality standards are met.

(emphasis in original). These statements, which appear directly on the Wagon Wheels Mac + Cheese label, taken individually and in context of the label as a whole, are false and misleading because the product is actually unhealthy due to its high total and saturated fat content.

62. The Kidfresh Wagon Wheels Mac + Cheese product label also bears the statements, "Simply Nutritious . . . Hidden Veggies, Excellent Source of Protein, Excellent Source of Calcium and Vitamin A, 0g Trans Fat, No Artificial Flavors, Colors or Preservatives," and "The one thing we're sneaky about? Vegetables." These statements, taken individually and in context of the label as a whole, are false and misleading because the product is actually unhealthy due to its high total and saturated fat content.

63. In addition, the label of the Kidfresh Wagon Wheels Mac + Cheese product bears the phrases "PACKED WITH GOODNESS," "EXCELLENT SOURCE OF PROTEIN,"

"EXCELLENT SOURCE OF CALCIUM AND VITAMIN A," "ALL NATURAL with Hidden Veggies," and "real grated cheddar + creamy cheese sauce with hidden vegetables." These statements, taken individually and in context of the label as a whole, are false and misleading because Kidfresh Wagon Wheels Mac + Cheese is actually unhealthy due to its high total and saturated fat content.

64. To further bolster these misleading health claims, Kidfresh labels its Wagon Wheels Mac + Cheese as "Fresh-Frozen Goodness," and states that "Freezing is one of the best ways to preserve nutrients and flavors while extending the shelf life of food. That's why Kidfresh meals are frozen immediately after being cooked, so that they keep all the good stuff for a long time!" These statements, taken individually and in context of the label as a whole, are false and misleading because Kidfresh Wagon Wheels Mac + Cheese is actually unhealthy due to its high total and saturated fat content.

65. In sum, the totality of the Kidfresh Wagon Wheels Mac + Cheese label conveys the concrete message to a reasonable consumer that the product is healthy. Kidfresh intended consumers to rely upon this message, which is false and misleading for the reasons stated herein.

2. Kidfresh places misleading health and nutrition claims on the label of its frozen Mamma Mia Cheesy Pizza product

66. Below are exemplars of the front and back of a Kidfresh Mamma Mia Cheesy Pizza product label.

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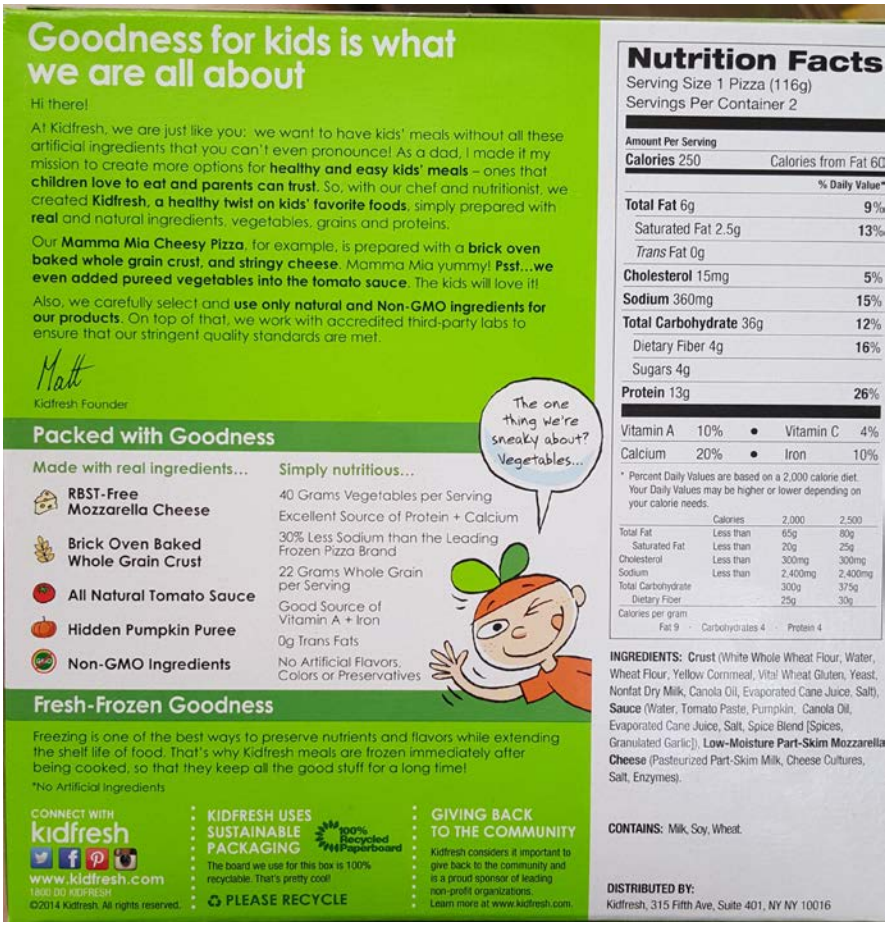
kidfresh
Mamma Mia Cheesy Pizza
NEW!
Brick Oven Baked Whole Grain Crust, Stringy Cheese, Tomato Sauce + Hidden Vegetables
2 PIZZAS per BOX
ALL NATURAL*
40g Vegetables per Serving
22g Whole Grain per Serving
Excellent Source of Calcium
30% Less Sodium than the leading brand
Non-GMO
PACKED WITH GOODNESS!
EXCELLENT SOURCE OF PROTEIN
WHOLE GRAIN 22 grams per serving
Serving Suggestion
*Minimally Processed. No Artificial Ingredients
BPA FREE Packaging
KEEP FROZEN
COOK THOROUGHLY
NET WT 8.2 OZ (232g)


Goodness for kids is what we are all about
Hi there!
At Kidfresh, we are just like you: we want to have kids' meals without all these artificial ingredients that you can't even pronounce! As a dad, I made it my mission to create more options for healthy and easy kids' meals – ones that children love to eat and parents can trust. So, with our chef and nutritionist, we created Kidfresh, a healthy twist on kids' favorite foods, simply prepared with real and natural ingredients, vegetables, grains and proteins.
Our Mamma Mia Cheesy Pizza, for example, is prepared with a brick oven baked whole grain crust, and stringy cheese. Mamma Mia yummy! Psst...we even added pureed vegetables into the tomato sauce. The kids will love it!
Also, we carefully select and use only natural and Non-GMO ingredients for our products. On top of that, we work with accredited third-party labs to ensure that our stringent quality standards are met.
Matt
Kidfresh Founder
Packed with Goodness
Made with real ingredients...
RBST-Free Mozzarella Cheese
Brick Oven Baked Whole Grain Crust
All Natural Tomato Sauce
Hidden Pumpkin Puree
Non-GMO Ingredients
Simply nutritious...
40 Grams Vegetables per Serving
Excellent Source of Protein + Calcium
30% Less Sodium than the Leading Frozen Pizza Brand
22 Grams Whole Grain per Serving
Good Source of Vitamin A + Iron
0g Trans Fats
No Artificial Flavors, Colors or Preservatives
The one thing we're sneaky about? Vegetables...
Fresh-Frozen Goodness
Freezing is one of the best ways to preserve nutrients and flavors while extending the shelf life of food. That's why Kidfresh meals are frozen immediately after being cooked, so that they keep all the good stuff for a long time!
*No Artificial Ingredients
CONNECT WITH kidfresh
www.kidfresh.com
1800 DO KIDFRESH
©2014 Kidfresh. All rights reserved.
KIDFRESH USES SUSTAINABLE PACKAGING
100% Recycled Paperboard
The board we use for this box is 100% recyclable. That's pretty cool!
PLEASE RECYCLE
GIVING BACK TO THE COMMUNITY
Kidfresh considers it important to give back to the community and is a proud sponsor of leading non-profit organizations. Learn more at www.kidfresh.com.
Nutrition Facts
Serving Size 1 Pizza (116g)
Servings Per Container 2
Amount Per Serving
Calories 250 Calories from Fat 60
% Daily Value*
Total Fat 6g 9%
Saturated Fat 2.5g 13%
Trans Fat 0g
Cholesterol 15mg 5%
Sodium 360mg 15%
Total Carbohydrate 36g 12%
Dietary Fiber 4g 16%
Sugars 4g
Protein 13g 26%
Vitamin A 10% • Vitamin C 4%
Calcium 20% • Iron 10%
* Percent Daily Values are based on a 2,000 calorie diet. Your Daily Values may be higher or lower depending on your calorie needs.
Calories 2,000 2,500
Total Fat Less than 65g 80g
Saturated Fat Less than 20g 25g
Cholesterol Less than 300mg 300mg
Sodium Less than 2,400mg 2,400mg
Total Carbohydrate 300g 375g
Dietary Fiber 25g 30g
Calories per gram
Fat 9 • Carbohydrates 4 • Protein 4
INGREDIENTS: Crust (White Whole Wheat Flour, Water, Wheat Flour, Yellow Cornmeal, Vital Wheat Gluten, Yeast, Nonfat Dry Milk, Canola Oil, Evaporated Cane Juice, Salt), Sauce (Water, Tomato Paste, Pumpkin, Canola Oil, Evaporated Cane Juice, Salt, Spice Blend [Spices, Granulated Garlic]), Low-Moisture Part-Skim Mozzarella Cheese (Pasteurized Part-Skim Milk, Cheese Cultures, Salt, Enzymes).
CONTAINS: Milk, Soy, Wheat.
DISTRIBUTED BY:
Kidfresh, 315 Fifth Ave, Suite 401, NY NY 10016

67. Kidfresh prominently labels its Mamma Mia Cheesy Pizza product with the phrase "Goodness for kids is what we are all about." This claim, taken individually and in context of the label as a whole, is false and misleading because Kidfresh Mamma Mia Cheesy Pizza is unhealthy due to its high total and saturated fat content.

68. Kidfresh further misleads consumers regarding the healthfulness of its Mamma Mia Cheesy Pizza product by claiming:

> At Kidfresh, we are just like you: we want to have kids' meals without all these artificial ingredients that you can't even pronounce! As a dad, I made it my mission to create more options for **healthy and easy kids' meals** – ones that **children love to eat and parents can trust**. So, with our chef and nutritionist, we created **Kidfresh, a healthy twist on kids' favorite foods**, simply prepared with real and natural ingredients, vegetables, grains and proteins.

(emphasis in original). These labeling statements taken individually and in context of the label as a whole, are false and misleading because the product is actually unhealthy due to its high total and saturated fat content.

69. To reinforce this misleading health message, Kidfresh further states that:

> Our Mamma Mia Cheesy Pizza, for example, is prepared with a **brick oven baked whole grain crust, and stringy cheese**. Mamma Mia yummy! **Psst…we even added pureed vegetables into the tomato sauce.** The kids will love it! Also, we carefully select and **use only natural and Non-GMO ingredients for our products.** On top of that, we work with accredited third-party labs to ensure that our stringent quality standards are met.

(emphasis in original). These statements, which appear directly on the Mamma Mia Cheesy Pizza label, taken individually and in context of the label as a whole, are false and misleading because the product is actually unhealthy due to its high total and saturated fat content.

70. The Kidfresh Mamma Mia Cheesy Pizza label also bears the claims: "Simply Nutritious. . . 40 Grams Vegetables per Serving, Excellent Source of Protein + Calcium, 30% Less Sodium than the Leading Frozen Pizza Brand, 22 Grams Whole Grain per Serving, Good Source of Vitamin A + Iron, 0g Trans Fats, No Artificial Flavors, Colors or Preservatives," and "Made with real ingredients . . . RBST-Free Mozzarella Cheese, Brick Oven Baked Whole Grain Crust, All Natural Tomato Sauce, Hidden Pumpkin Puree, Non-GMO

ingredients." These statements, taken individually and in context of the label as a whole, are false and misleading because Kidfresh Mamma Mia Cheesy Pizza is actually unhealthy due to its high total and saturated fat content.

71. In addition, the label of Kidfresh Mamma Mia Cheesy Pizza bears the phrases "PACKED WITH GOODNESS," "EXCELLENT SOURCE OF PROTEIN," "EXCELLENT SOURCE OF CALCIUM," "Brick Oven Baked Whole Grain Crust, Stringy Cheese, Tomato Sauce + Hidden Vegetables," "ALL NATURAL," "40g Vegetables per Serving," "22g Whole Grain per Serving," "Excellent Source of Calcium," and "30% Less Sodium than the leading brand." These statements, taken individually and in context of the label as a whole, are false and misleading because they suggest the product is healthy and distract from the fact that the Kidfresh Mamma Mia Cheesy Pizza is actually unhealthy due to its high total and saturated fat content.

72. The label of Kidfresh Mamma Mia Cheesy Pizza also states that "The one thing we're sneaky about? Vegetables." This statement, taken individually and in context of the label as a whole, is false and misleading because it suggests the product is healthy and distracts from the fact that the Kidfresh Mamma Mia Cheesy Pizza is actually unhealthy due to its high total and saturated fat content.

73. The label of the Kidfresh Mamma Mia Cheesy Pizza product also bears the claim "Whole Grain 22 grams per serving," which is contained in a "stamp" or "seal" from the Whole Grain Council, a purported "nonprofit consumer advocacy group" comprised of hundreds of food manufacturers like Cargill, ConAgra, Domino's Pizza, Frito-Lay, General Mills, Hostess, Kellogg, Kraft, Nestle, and McDonald's.[25] This statement, taken individually and in context of the label as a whole, is false and misleading because it suggests the product is healthy and distracts from the fact that Kidfresh Mamma Mia Cheesy Pizza is actually unhealthy due to its high total and saturated fat content.

74. To further bolster this misleading health message, Kidfresh states that its Mamma Mia Cheesy Pizza product is "Fresh-Frozen Goodness" and that "Freezing is one of

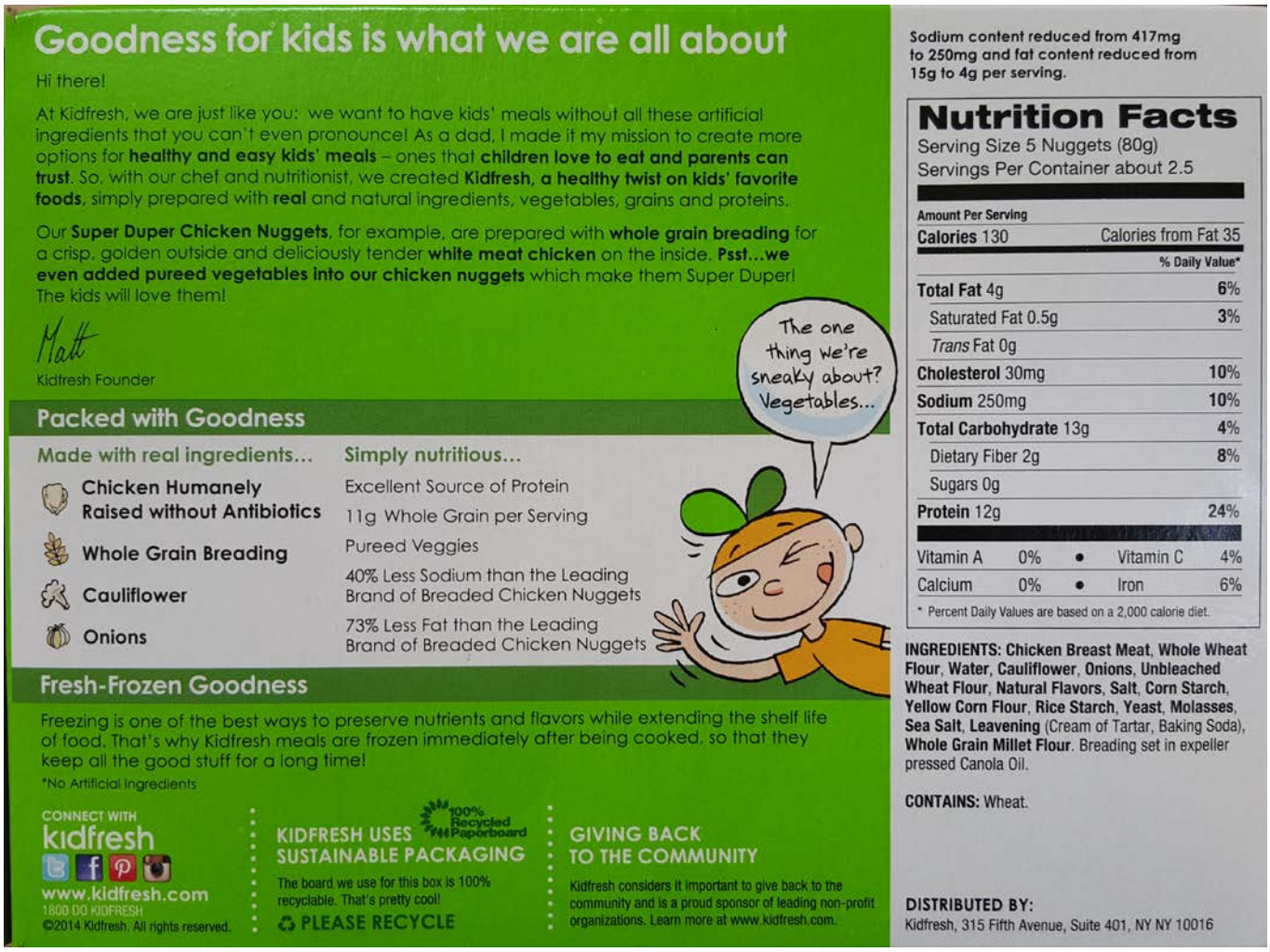
[25] *See* Whole Grain Council, About Us, http://wholegrainscouncil.org/about-us.

the best ways to preserve nutrients and flavors while extending the shelf life of food. That's why Kidfresh meals are frozen immediately after being cooked, so that they keep all the good stuff for a long time!" These statements, taken individually and in context of the label as a whole, are false and misleading because Kidfresh Mamma Mia Cheesy Pizza is actually unhealthy due to its high total and saturated fat content.

75. In sum, the totality of the Kidfresh Mamma Mia Cheesy Pizza label conveys the concrete message to a reasonable consumer that the product is healthy. Kidfresh intended consumers to rely upon this message, which is false and misleading for the reasons stated herein.

3. Kidfresh places misleading health and nutrition claims on the label of its Super Duper Chicken Nuggets product

76. Below are exemplars of the front and back of a Kidfresh Super Duper Chicken Nuggets product label.



77. Kidfresh prominently labels its Super Duper Chicken Nuggets product with the phrase, "Goodness for kids is what we are all about." This claim, taken individually and in context of the label as a whole, is false and misleading because the Kidfresh Super Duper Chicken Nuggets product is unhealthy due to its high total and saturated fat content.

78. Kidfresh further misleads consumers regarding the healthfulness of its Super Duper Chicken Nuggets product by claiming:

> At Kidfresh, we are just like you: we want to have kids' meals without all these artificial ingredients that you can't even pronounce! As a dad, I made it my mission to create more options for **healthy and easy kids' meals** – ones that **children love to eat and parents can trust**. So, with our chef and nutritionist, we created **Kidfresh, a healthy twist on kids' favorite foods**, simply prepared with real and natural ingredients, vegetables, grains and proteins.

(emphasis in original). These statements, which appear directly on the Super Duper Chicken Nuggets product label, taken individually and in context of the label as a whole, are false and

misleading because the product is actually unhealthy due to its high total and saturated fat content.

79. To reinforce this misleading health message, Kidfresh further states that:

> Our **Super Duper Chicken Nuggets**, for example, are prepared with **whole grain breading** for a crisp, golden outside and deliciously tender **white meat chicken** on the inside. **Psst…we even added pureed vegetables into our chicken nuggets** which make them Super Duper. The kids will love it!

(emphasis in original). These statements, which appear directly on the Super Duper Chicken Nuggets product label, taken individually and in context of the label as a whole, are false and misleading because the product is actually unhealthy due to its high total and saturated fat content.

80. The Kidfresh Super Duper Chicken Nuggets label also bears the claims, "Simply Nutritious. . . Excellent Source of Protein, 11g Whole Grain per Serving, Pureed Veggies, 40% Less Sodium than the Leading Brand of Breaded Chicken Nuggets, 73% Less Fat than the Leading Brand of Breaded Chicken Nuggets," and "Made with real ingredients . . . Chicken Humanely Raised without Antibiotics, Whole Grain Breading, Cauliflower, Onions." These statements, taken individually and in context of the label as a whole, are false and misleading because the Kidfresh Super Duper Chicken Nuggets product is actually unhealthy due to its high total and saturated fat content.

81. In addition, the label of Kidfresh Super Duper Chicken Nuggets bears the phrases, "PACKED WITH GOODNESS," "EXCELLENT SOURCE OF PROTEIN," "Made with White Meat Chicken Patties + Pureed Vegetables, in a Whole Grain Breading," "ALL NATURAL," "11g Whole Grain per Serving," "40% Less Sodium [and] 73% Less Fat than the leading brand of breaded chicken nuggets," and "Sodium content reduced from 417mg to 250mg in the fat content reduced from 15g to 4g per serving." These statements, taken individually and in context of the label as a whole, are false and misleading because they suggest the product is healthy and distract from the fact that the Kidfresh Super Duper Chicken Nuggets product is actually unhealthy due to its high total and saturated fat content.

82. The label of Kidfresh Super Duper Chicken Nuggets also states that "The one thing we're sneaky about? Vegetables." This statement, taken individually and in context of the label as a whole, is false and misleading because it suggests the product is healthy and distracts from the fact that the Kidfresh Super Duper Chicken Nuggets product is actually unhealthy due to its high total and saturated fat content.

83. The label of the Kidfresh Super Duper Chicken Nuggets product also bears the claim "Whole Grain 11 grams per serving," which is contained in a "stamp" or "seal" from the Whole Grain Council, a purported "nonprofit consumer advocacy group" comprised of hundreds of food manufacturers like Cargill, ConAgra, Domino's Pizza, Frito-Lay, General Mills, Hostess, Kellogg, Kraft, Nestle, and McDonald's. This statement, taken individually and in context of the label as a whole, is false and misleading because it suggests the product is healthy and distracts from the fact that the Kidfresh Super Duper Chicken Nuggets product is actually unhealthy due to its high total and saturated fat content.

84. To further bolster this misleading health message, Kidfresh claims its Super Duper Chicken Nuggets product is "Fresh-Frozen Goodness" and that "Freezing is one of the best ways to preserve nutrients and flavors while extending the shelf life of food. That's why Kidfresh meals are frozen immediately after being cooked, so that they keep all the good stuff for a long time!" These statements, taken individually and in context of the label as a whole, are false and misleading because the Kidfresh Super Duper Chicken Nuggets product is actually unhealthy due to its high total and saturated fat content.

85. In sum, the totality of the Kidfresh Super Duper Chicken Nuggets label conveys the concrete message to a reasonable consumer that the product is healthy. Kidfresh intended consumers to rely upon this message, which is false and misleading for the reasons stated herein.

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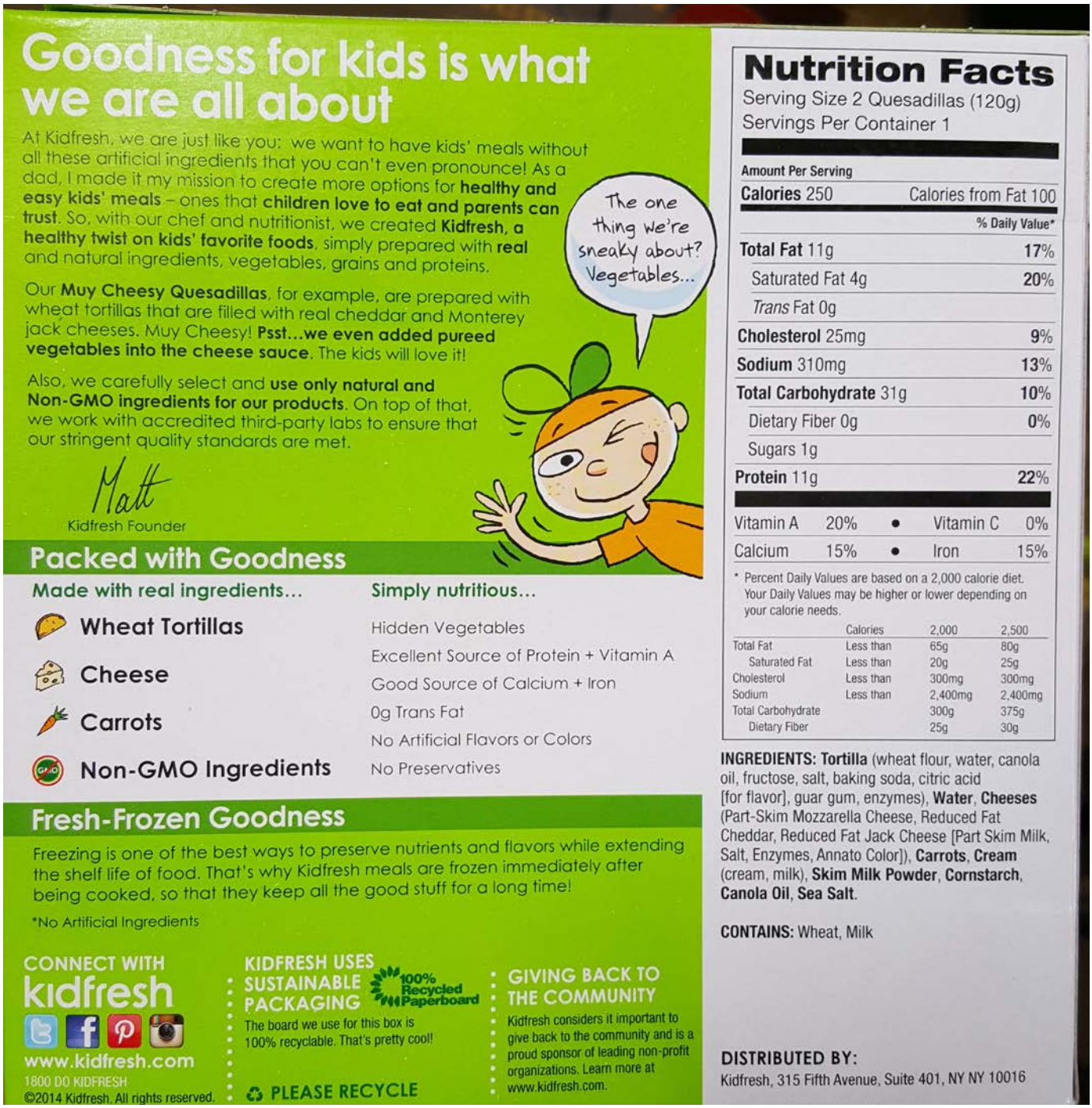
4. Kidfresh places misleading health and nutrition claims on the label of its Muy Cheesy Quesadillas product

86. Below are exemplars of the front and back of a Muy Cheesy Quesadillas product label.



87. Kidfresh prominently labels its Muy Cheesy Quesadillas product with the phrase, "Goodness for kids is what we are all about." This claim, taken individually and in context of the label as a whole, is false and misleading because Kidfresh's Muy Cheesy Quesadilla product is unhealthy due to its high total and saturated fat content.

88. Kidfresh further misleads consumers regarding the healthfulness of its Muy Cheesy Quesadillas product by claiming:

> At Kidfresh, we are just like you: we want to have kids' meals without all these artificial ingredients that you can't even pronounce! As a dad, I made it my mission to create more options for **healthy and easy kids' meals** – ones that **children love to eat and parents can trust**. So, with our chef and nutritionist, we created **Kidfresh, a healthy twist on kids' favorite foods**, simply prepared with real and natural ingredients, vegetables, grains and proteins.

(emphasis in original). These statements, which appear directly on the Muy Cheesy Quesadillas label, taken individually and in context of the label as a whole, are false and misleading because the product is actually unhealthy due to its high total and saturated fat content.

89. To reinforce this misleading health message, Kidfresh further states that:

> Our **Muy Cheesy Quesadillas**, for example, are prepared with wheat tortillas that are filled with the real cheddar in Monterey jack cheeses. Muy Cheesy! **Psst…we even added pureed vegetables into the cheese sauce.** The kids will love it! Also, we carefully select and **use only natural and Non-GMO ingredients for our products.** On top of that, we work with accredited third-party labs to ensure that our stringent quality standards are met.

(emphasis in original). These statements, which appear directly on the Muy Cheesy Quesadillas label, taken individually and in context of the label as a whole, are false and misleading because the product is actually unhealthy due to its high total and saturated fat content.

90. The Kidfresh Muy Cheesy Quesadilla product label also bears the claims, "Simply Nutritious. . . Hidden Vegetables, Excellent Source of Protein + Vitamin A, Good Source of Calcium + Iron, 0g Trans Fat, No Artificial Flavors or Colors, No Preservatives," and "Made with real ingredients . . . Wheat Tortillas, Cheese, Carrots, Non-GMO Ingredients." These statements, taken individually and in context of the label as a whole, are false and misleading because the Kidfresh Muy Cheesy Quesadillas product is actually unhealthy due to its high total and saturated fat content.

91. In addition, the label of Kidfresh Muy Cheesy Quesadillas bears the phrases, "PACKED WITH GOODNESS," "WITH HIDDEN VEGGIES!" "Filled with real cheddar and Monterey Jack + hidden vegetables," "ALL NATURAL," and "Excellent Source of

Protein." These statements, taken individually and in context of the label as a whole, are false and misleading because the Kidfresh Muy Cheesy Quesadillas product is actually unhealthy due to its high total and saturated fat content.

92. The label of Kidfresh Muy Cheesy Quesadillas also states that "The one thing we're sneaky about? Vegetables." This statement, taken individually and in context of the label as a whole, is false and misleading because it suggests the product is healthy and distracts from the fact that the Kidfresh Muy Cheesy Quesadillas product is actually unhealthy due to its high total and saturated fat content.

93. To further bolster this misleading health message, Kidfresh represents that its Muy Cheesy Quesadillas product is "Fresh-Frozen Goodness" and that "Freezing is one of the best ways to preserve nutrients and flavors while extending the shelf life of food. That's why Kidfresh meals are frozen immediately after being cooked, so that they keep all the good stuff for a long time!" These statements, taken individually and in context of the label as a whole, are false and misleading because the product is actually unhealthy due to its high total and saturated fat content.

94. In sum, the totality of the Kidfresh Muy Cheesy Quesadillas product label conveys the concrete message to a reasonable consumer that the product is healthy. Kidfresh intended consumers to rely upon this message, which is false and misleading for the reasons stated herein.

E. The Kidfresh Website Contains Misleading Health & Wellness Claims

95. The labels of the Kidfresh High-Fat Frozen Foods direct consumers to Kidfresh's website (www.Kidfresh.com), which Kidfresh uses as an extended platform for its health marketing campaign.

96. Prominently placed at the top of each page of the Kidfresh website, is the phrase "Healthy Frozen Kids Meals."[26]

[26] Kidfresh, Home Page, http://www.kidfresh.com.

97. On the "Our Products" page of the Kidfresh website, Kidfresh claims to "use wholesome ingredients, and only the ones needed for great taste and nutrition."[27]

98. The same page also states that "Kids don't eat enough veggies . . . That's why all Kidfresh meals are prepared with hidden veggies."[28]

99. The Kidfresh website also claims that Kidfresh products are "rich in the right stuff: Good or excellent source of protein, rich in vegetables, vitamins, iron, calcium, fiber and more," and contain "No bad stuff…plain and simple."[29]

100. Kidfresh's health-based marketing campaign is also evident on its facebook page, which the main background picture or "cover photo" represents that Kidfresh is "The healthy kids' meal solution for busy parents!"[30]

101. In addition, the company mission portion of the Kidfresh Facebook page states, "We care about yummy and healthy foods for children and have put our heart and soul to provide top nutrition . . . ."[31]

102. These and similar statements on the Kidfresh website, the URL of which is expressly set forth on the Kidfresh High-Fat Frozen Food labels, are false and misleading because the Kidfresh Products are in fact unhealthy, contributing to increased risk of obesity, CHD, and other morbidity due to their high total and saturated fat content.

F. Kidfresh Enlists Mommy Bloggers to Further its Misleading Health-Based Marketing Campaign.

103. In addition to using its own website, Facebook, Twitter, and other social media websites to disseminate its misleading health marketing campaign, Kidfresh employs or

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[27] Kidfresh, Our Products, http://www.kidfresh.com/our-products.

[28] *Id.*

[29] Kidfresh, Our Promise, http://www.kidfresh.com/our-promise.

[30] Kidfresh Facebook Page, https://www.facebook.com/Kidfreshfoods.

[31] *Id.*

compensates hundreds of "Mommy Bloggers" to further promote and advertise its products as healthy.

104. Kidfresh actively seeks out bloggers, especially so-called "mommy bloggers," to review its products and further promote its health-based marketing campaign.[32]

105. In addition, the Kidfresh website asks entrepreneurial bloggers to "partner with us for a Kidfresh product review."[33]

106. The Kidfresh website lists over 100 mommy bloggers that it has enlisted to write glowing, scripted reviews of its products.[34]

107. Kidfresh officially employs some of these mommy bloggers,[35] while others are provided with varying forms of compensation.[36]

108. Each mommy blogger is given a script or points of emphasis, which mirror the major themes the Kidfresh health marketing campaign. These themes or talking points appear with striking frequency and surprisingly consistent verbiage across these blogs.

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[32] *See* The Mama Maven, Kidfresh Healthy Meals Review (Nov. 3, 2013), *at* http://www.themamamaven.com/2013/11/03/kidfresh-healthy-foods-review ("when Kidfresh contacted me and asked me if I wanted to try out their healthy frozen meals, I was game").

[33] Kidfresh, Contact Us, http://www.kidfresh.com/contact-us.

[34] *See* Kidfresh, News, http://www.kidfresh.com/the-buzz/news.

[35] *See, e.g.*, Triple Threat Mommy, About, *at* http://triplethreatmommy.com/about ("Disclaimer: One of my clients is Kidfresh, an all-natural frozen kids meal brand, so I cannot work with products that compete with Kidfresh.").

[36] *See, e.g.*, Cute as a Fox, Quick kid friendly meals on the go with Kidfresh (November 6, 2012), *at* http://www.cuteasafox.com/2012/11/kidfresh-meals.html ("I am a member of the Collective Bias® Social Fabric® Community. This shop has been compensated as part of a social shopper insights study for Collective Bias® and Kidfresh #CBias #SocialFabric #KFHealthyKids"); *see also* Colettlou, Kidfresh Chicken Nuggets Review & Giveaway! (August 27, 2013), *at* http://coletteluo-reviews-products.blogspot.com/2013/08/kidfresh-chicken-nuggets-review-giveaway.html ("Welcome to another review. Yes, this is **sponsored**." (emphasis in original)).

109. For example, playing up the misconception that children won't willingly eat healthy foods or vegetables, a remarkable number of bloggers that have "reviewed" Kidfresh products have commented that Kidfresh provides a "healthy" solution to the problem of "picky" eaters:

- "Getting your kids to eat healthy, especially when it comes to picky eaters is definitely a challenge."[37]
- "One of the biggest problems I find with being busy is trying to find a fast, healthy meal for Baby Z. It also doesn't help that she happens to be the world's pickiest eater! Well, my picky eater and I were lucky enough to try a few KidFresh frozen meals to see if we liked them."[38]
- "My son can be a very picky eater, at the age of 3 he is sure that his diet should consist of cupcakes, pizza, chips and chocolate milk . . . but it seriously takes a lot of nagging, begging and bribing to get him to eat anything that resembles healthy food."[39]
- "Attention parents with picky eaters, here's a way to get your kids to eat their veggies."[40]
- "Unless you have some miracle child, everyone knows, getting kids to eat their veggies isn't easy."[41]

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[37] Party of Four, Room for One More, Kidfresh Giveaway and Review (Nov. 23, 2013), *at* http://partyofthreeroomformore.blogspot.com/2013/11/kidfresh-giveaway-review.html.

[38] I'm No Domestic Goddess, Kidfresh Review (Sept. 17, 2013), *at* http://imnodomesticgoddess.blogspot.com/2013/09/kid-fresh-review.html.

[39] Sweet Silly Sara, Kidfresh Review (July 8, 2013), *at* http://www.sweetsillysara.com/2013/07/kidfresh-review-and-giveaway.html.

[40] Refrigerated Frozen Food, All-Natural Kids Foods with Hidden Vegetables (Dec. 12, 2013), *at* http://www.refrigeratedfrozenfood.com/articles/87380-all-natural-kids-foods-with-hidden-vegetables.

[41] Seven Kids and Us, Kidfresh Review and Giveaway (June 16, 2013), *at* http://www.7kidsandus.com/2013/06/kidfresh-review-and-giveaway-2-winners.html.

- "Everyone has picky eaters in their families"[42]
- "Getting Kenzie to eat a good balanced meal is tough . . . . Kenzie will always have Kidfresh in the freezer for quick, healthy meals"[43]
- "My son is a picky eater. . . . it super hard to get my little man to eat some veggies. Lucky for me, and for parents everywhere, there's a great line of fresh foods for kids that are healthy . . . ."[44]
- "My kids are picky eaters. So when Kidfresh contacted me and asked me if I wanted to try out their healthy frozen meals, I was game."[45]

110. The other major the themes of Kidfresh's carefully crafted health marketing campaign also appear with uncanny frequency and consistency in phraseology.

111. Meanwhile, some bloggers repeat lengthy portions of the Kidfresh marketing material verbatim.

112. These product reviews, for which Kidfresh provides compensation, are false and misleading because the Kidfresh High-Fat Frozen Foods are in fact unhealthy, contributing to increased risk of obesity and CHD and other mortality, due to their high total and saturated fat content.

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[42] Five Little Words, The Perez Family @KidFreshFoods Super Duper Chicken Nuggets Review (Aug. 28, 2013), *at* http://fivelittlewords.net/?s=kidfresh&submit=Search.

[43] Being MVP, Kidfresh Giveaway (March 12, 2013), *at* http://www.beingmvp.com/2013/03/kidfresh-giveaway.html.

[44] Mommy's Block Party, Kidfresh (Review & Giveaway) (May 11, 2012), *at* http://www.mommysblockparty.co/2012/05/kidfresh-review-giveaway.html.

[45] The Mama Maven, Kidfresh Healthy Meals Review (Nov. 3, 2013), *at* http://www.themamamaven.com/2013/11/03/kidfresh-healthy-foods-review.

IV. The Labeling of Kidfresh's High-Fat Frozen Foods Violates New York, California, and Federal Law

A. Any Violation of Federal Food Labeling Statutes or Regulations is a Violation of New York and California Law

113. "California, [and] New York . . . broadly prohibit the misbranding of food in language largely identical to that found in the FDCA." *Ackerman v. Coca-Cola Co.*, 2010 U.S. Dist. LEXIS 73156, at *12 (E.D.N.Y. July 21, 2010).

114. Pursuant to the California Sherman Food, Drug, and Cosmetic Law, Cal. Health & Safety Code §§ 109875 *et. seq.* (the "Sherman Law"), California has adopted the federal food labeling requirements as its own, *see id.* § 110665 ("Any food is misbranded if its labeling does not conform with the requirements for nutrition labeling as set forth in Section 403(q) (21 U.S.C. Sec. 343(q)) of the federal act and the regulation adopted pursuant thereto.").

115. Similarly, "New York's Agriculture and Marketing law similarly . . . incorporates the FDCA's labeling provisions found in 21 C.F.R. part 101." *Ackerman*, 2010 U.S. Dist. LEXIS 73156, *12 (citing N.Y. Comp. Codes R. & Regs. tit. 1, § 259.1).

116. The Federal Food Federal Food, Drug, and Cosmetic Act expressly authorizes state regulations, such as the Agriculture and Marketing Law, and Sherman Law, that are "identical to the requirement[s]" of the FDCA and federal regulations. *See* 21 U.S.C. § 343-1.

117. Because the requirements of the New York Agriculture and Markets Law and the Sherman Law are identical to the requirements of the Federal Food, Drug, and Cosmetic Act and FDA regulations the laws are explicitly authorized by the FDCA.

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B. The Kidfresh High-Fat Frozen Foods' False and Misleading Labeling Claims Render the Products Misbranded Under State and Federal Law

118. Kidfresh's deceptive statements described herein violate N.Y. Agric. & Mkts. Law § 201, Cal. Health & Safety Code § 109875, and 21 U.S.C. § 343(a), which deem a food misbranded if its labeling is "false or misleading in any particular."

119. In addition, the labeling is misleading, and thus misbranded, because "it fails to reveal facts that are material in light of other representations." 21 C.F.R § 1.21.

C. The Kidfresh High-Fat Frozen Foods are Misbranded Because They Bear Unauthorized Health Claims

120. Kidfresh's high-fat products are misbranded because their labels claim that the products are healthy, but do not meet the requirements for making such health claims. *See* 21 U.S.C. § 343(r)(1)(A); N.Y. Comp. Codes R. & Regs. tit. 1, § 259.1; Cal. Health & Safety Code § 110670.

121. The labels of the Kidfresh High-Fat Frozen Foods each bear the claims "**healthy and easy kids' meals**" and "**a healthy twist on kids' favorite foods**, simply prepared with real and natural ingredients, vegetables, grains and proteins" (emphasis in original). Therefore, the products must meet the requirements contained in 21 C.F.R § 101.65(d)(2).

122. To "use the term 'healthy' or related terms (e.g., 'health,' 'healthful,' 'healthfully,' 'healthfulness,' 'healthier,' 'healthiest,' 'healthily,' and 'healthiness')" in connection with a statement about a food's nutrients, the food must satisfy specific "conditions for fat, saturated fat, cholesterol, and other nutrients." 21 C.F.R § 101.65(d)(2).

123. Kidfresh Wagon Wheels Mac + Cheese is defined as a "main dish" product by 21 C.F.R § 101.13(m), and therefore is governed by section (E) of the table. *See id.* § 101.65(d)(2)(i)(E).

124. Under 21 C.F.R. § 101.65(d)(2)(i)(E), to bear a "healthy" claim, a food must, among other things, be (1) "Low fat as defined in § 101.62(b)(3)," and (2) "Low saturated fat as defined in § 101.62(c)(3)." *See* 21 C.F.R. § 101.65(d)(2)(i)(E) (incorporating by reference

low total fat requirement, 21 C.F.R. § 101.62(b)(3), and low saturated fat requirement, 21 C.F.R. § 101.62(c)(3)).

125. Section 101.62(b)(3) provides that a main dish product is "low fat" only if the "product contains 3 g or less of total fat per 100 g and not more than 30 percent of calories from fat."

126. Under 21 C.F.R. § 101.62(c)(3), a main dish product is "low saturated fat" only if the "product contains 1 g or less of saturated fatty acids per 100 g and less than 10 percent calories from saturated fat."

127. A 180 gram serving of Kidfresh Wagon Wheels Mac + Cheese is listed as containing 9 grams of total fat and therefore contains more than 3 grams of total fat per 100 grams. Thus Kidfresh Wagon Wheels Mac + Cheese does not meet the definition of low fat contained in § 101.62(b)(3), as required by § 101.65(d)(2)(i)(E).

128. In addition, a 180 gram serving of Kidfresh Wagon Wheels Mac + Cheese is listed as containing 5 grams of saturated fat and therefore contains more than 1 gram of saturated fat per 100 grams. Thus Kidfresh Wagon Wheels Mac + Cheese does not meet the definition of low saturated fat contained in § 101.62(c)(3), as required by § 101.65(d)(2)(i)(E).

129. Kidfresh's Mamma Mia Cheesy Pizza, Muy Cheesy Quesadillas, and Super Duper Chicken Nugget products do not meet the definition of "main dish" products, but rather are foods "not specifically listed" in the table contained in 21 C.F.R § 101.65(d)(2)(i) and, therefore, are governed by section (F) of the table. *See id.* § 101.65(d)(2)(i)(F).

130. Under 21 C.F.R. § 101.65(d)(2)(i)(F), to bear a "healthy" claim, a food must, among other things, be (1) "Low fat as defined in § 101.62(b)(2)," and (2) "Low saturated fat as defined in § 101.62(c)(2)." *See* 21 C.F.R. § 101.65(d)(2)(i)(F) (incorporating by reference low total fat requirement, 21 C.F.R. § 101.62(b)(2), and low saturated fat requirement, 21 C.F.R. § 101.62(c)(2)).

131. Section 101.62(b)(2)(i)(A) provides the applicable definition of "low fat" for Kidfresh's Mamma Mia Cheesy Pizza, Muy Cheesy Quesadillas, and Super Duper Chicken

Nugget products because they each have a "reference amount customarily consumed greater than 30 g."[46]

132. Under § 101.62(b)(2), a food is "low fat" only if it "contains 3 g or less of fat per reference amount customarily consumed."

133. Under 21 C.F.R. § 101.62(c)(2), a food is "low saturated fat" only if it "contains 1 g or less of saturated fatty acids per reference amount customarily consumed and not more than 15 percent of calories from saturated fatty acids."

134. Kidfresh Mamma Mia Cheesy Pizza has a RACC of 140 grams, but according to the label of Kidfresh Mamma Mia Cheesy Pizza, a listed serving of only 116 grams contains 7 grams of total fat. Therefore, Kidfresh Mamma Mia Cheesy Pizza does not contain less than 3 grams of total fat per RACC as required by 21 C.F.R. § 101.65(d)(2)(i)(F).

135. In addition, according to the label of Kidfresh Mamma Mia Cheesy Pizza, a listed serving of only 116 grams contains 2.5 grams of saturated fat. Therefore, Kidfresh Mamma Mia Cheesy Pizza does not contain 1 gram or less of saturated fat per RACC as required by 21 C.F.R. § 101.65(d)(2)(i)(F).

136. Kidfresh Super Duper Chicken Nuggets have a RACC of 140 grams, but according to the label of Kidfresh Super Duper Chicken Nuggets, a listed serving of only 80 grams contains 4 grams of total fat. Therefore, Kidfresh Super Duper Chicken Nuggets do not contain less than 3 grams of total fat per RACC as required by 21 C.F.R. § 101.65(d)(2)(i)(F).

137. Kidfresh Super Duper Chicken Nuggets have a RACC of 140 grams, but according to the label of Kidfresh Super Duper Chicken Nuggets, a listed serving of only 80 grams contains 0.5 grams of saturated fat. Upon information and belief, Kidfresh Super Duper

[46] Under 21 C.F.R. 101.12, Kidfresh Mamma Mia Cheesy Pizza, Muy Cheesy Quesadillas, and Super Duper Chicken Nuggets are "Mixed Dishes" that are "Not measurable with cup, e.g., burritos, egg rolls, enchiladas, pizza, pizza rolls, quiche, all types of sandwiches" and, therefore, have reference amounts customarily consumed of 140 grams. *See* 21 C.F.R. 101.12.

Chicken Nuggets do not contain 1 gram or less of saturated fat per 140 gram RACC as required by 21 C.F.R. § 101.65(d)(2)(i)(F).[47]

138. Kidfresh Muy Cheesy Quesadillas have a RACC of 140 grams, but according to the label of Kidfresh Muy Cheesy Quesadillas, a listed serving of only 120 grams contains 11 grams of total fat. Therefore, Kidfresh Muy Cheesy Quesadillas do not contain less than 3 grams of total fat per RACC as required by 21 C.F.R. § 101.65(d)(2)(i)(F).

139. In addition, a listed serving of Kidfresh Muy Cheesy Quesadillas is only 120 grams, but still contains 4 grams of saturated fat. Therefore, Kidfresh Muy Cheesy Quesadillas do not contain 1 gram or less of saturated fat per RACC as required by 21 C.F.R. § 101.65(d)(2)(i)(F).

140. In sum, the Kidfresh High-Fat Frozen Food products bear unauthorized claims that the products are healthy. The products do not meet the clear and specific criteria the FDA (and by extension, New York and California) require for using the term healthy to describe a food.

141. Kidfresh's use of the term healthy (and variations) to describe the Kidfresh High-Fat Frozen Food products not only violates 21 C.F.R. § 101.65 and renders the products misbranded, but also misleads consumers regarding the nature of the oils, in the specific manner the regulations are intended to prevent.

V. Plaintiff's Purchase, Reliance, and Injury

142. Plaintiff Ki Burke purchased the Kidfresh high-fat frozen foods on a regular, almost weekly basis beginning in approximately the summer of 2012. During this period, Ms. Burke purchased as many as six Kidfresh products per week. Ms. Burke purchased the products for household use, and both consumed them herself, and fed them to young relatives.

[47] "'Fat, total' or 'Total fat': A statement of the number of grams of total fat in a serving defined as total lipid fatty acids and expressed as triglycerides. Amounts shall be expressed to the nearest 0.5 (1/2) gram increment below 5 grams and to the nearest gram increment above 5 grams. If the serving contains less than 0.5 gram, the content shall be expressed as zero." 21 CFR 101.9(c)(2).

143. As best she can recall, Ms. Burke has purchased these products at various Whole Foods Markets in West Los Angeles, including those located at 2655 Pacific Coast Highway, Torrance, California 90505, and 6550 East Pacific Coast Highway, Long Beach, California 90803. In addition, as best she can recall, Ms. Burke has purchased these products at various Target stores in Los Angeles, including those located at 1701 North Gaffey Street, San Pedro, California 90731, 651 West Sepulveda Boulevard, Carson, California 90745, and 3433 Sepulveda Boulevard, Torrance, California 90505.

144. Ms. Burke believes her most recent purchase occurred in or around December 2015, when she purchased Kidfresh Muy Cheesy Quesadillas from Whole Foods Market located at 2655 Pacific Coast Highway, Torrance, California 90505.

145. When deciding to purchase the Kidfresh Muy Cheesy Quesadillas, plaintiff read and relied on the following claims, or substantially similar claims that conveyed the same health message, contained on its label:

a. "Goodness for kids is what we are all about."

b. "At Kidfresh, we are just like you: we want to have kids' meals without all these artificial ingredients that you can't even pronounce! As a dad, I made it my mission to create more options for healthy and easy kids' meals – ones that children love to eat and parents can trust. So, with our chef and nutritionist, we created Kidfresh, a healthy twist on kids' favorite foods, simply prepared with real and natural ingredients, vegetables, grains and proteins."

c. "Our **Muy Cheesy Quesadillas**, for example, are prepared with wheat tortillas that are filled with the real cheddar in Monterey jack cheeses. Muy Cheesy! **Psst…we even added pureed vegetables into the cheese sauce.** The kids will love it! Also, we carefully select and **use only natural and Non-GMO ingredients for our products.** On top of that, we work with accredited third-party labs to ensure that our stringent quality standards are met."

d. "Simply Nutritious. . . Hidden Vegetables, Excellent Source of Protein + Vitamin A, Good Source of Calcium + Iron, 0g Trans Fat, No Artificial Flavors or Colors, No Preservatives"

e. "Made with real ingredients . . . Wheat Tortillas, Cheese, Carrots, Non-GMO Ingredients."

f. "PACKED WITH GOODNESS," "WITH HIDDEN VEGGIES!" "Filled with real cheddar and Monterey Jack + hidden vegetables," "ALL NATURAL," and "Excellent Source of Protein"

g. "Whole Grain 11grams per serving" "WholeGrainsCouncil.org"

h. "The one thing we're sneaky about? Vegetables."

i. "Fresh-Frozen Goodness"

j. "Freezing is one of the best ways to preserve nutrients and flavors while extending the shelf life of food. That's why Kidfresh .meals are frozen immediately after being cooked, so that they keep all the good stuff for a long time!"

146. When deciding to purchase the Kidfresh Mama Mia Cheesy Pizza, plaintiff read and relied on the following claims, or substantially similar claims that conveyed the same health message, contained on its label:

a. "Goodness for kids is what we are all about."

b. "At Kidfresh, we are just like you: we want to have kids' meals without all these artificial ingredients that you can't even pronounce! As a dad, I made it my mission to create more options for healthy and easy kids' meals – ones that children love to eat and parents can trust. So, with our chef and nutritionist, we created Kidfresh, a healthy twist on kids' favorite foods, simply prepared with real and natural ingredients, vegetables, grains and proteins."

c. "Our Mamma Mia Cheesy Pizza, for example, is prepared with a brick oven baked whole grain crust, and stringy cheese. Mamma Mia yummy! Psst…we even added pureed vegetables into the tomato sauce. The kids will love it! Also, we carefully select and use only natural and Non-GMO ingredients for our products. On top of that, we work with accredited third-party labs to ensure that our stringent quality standards are met."

d. "Simply Nutritious. . . 40 Grams Vegetables per Serving, Excellent Source of Protein + Calcium, 30% Less Sodium than the Leading Frozen Pizza Brand, 22 Grams Whole Grain per Serving, Good Source of Vitamin A + Iron, 0g Trans Fats, No Artificial Flavors, Colors or Preservatives," and "Made with real ingredients . . . RBST-Free Mozzarella

Cheese, Brick Oven Baked Whole Grain Crust, All Natural Tomato Sauce, Hidden Pumpkin Puree, Non-GMO ingredients."

e. "PACKED WITH GOODNESS," "EXCELLENT SOURCE OF PROTEIN," "EXCELLENT SOURCE OF CALCIUM," "Brick Oven Baked Whole Grain Crust, Stringy Cheese, Tomato Sauce + Hidden Vegetables," "ALL NATURAL," "40g Vegetables per Serving," "22g Whole Grain per Serving," "Excellent Source of Calcium," and "30% Less Sodium than the leading brand."

f. "Whole Grain 22 grams per serving" "WholeGrainsCouncil.org"

g. "The one thing we're sneaky about? Vegetables."

h. "Fresh-Frozen Goodness"

i. "Freezing is one of the best ways to preserve nutrients and flavors while extending the shelf life of food. That's why Kidfresh .meals are frozen immediately after being cooked, so that they keep all the good stuff for a long time!"

147. When deciding to purchase the Kidfresh Super Duper Chicken Nuggets, plaintiff read and relied on the following claims, or substantially similar claims that conveyed the same health message, contained on its label:

a. "Goodness for kids is what we are all about"

b. "At Kidfresh, we are just like you: we want to have kids' meals without all these artificial ingredients that you can't even pronounce! As a dad, I made it my mission to create more options for healthy and easy kids' meals – ones that children love to eat and parents can trust. So, with our chef and nutritionist, we created Kidfresh, a healthy twist on kids' favorite foods, simply prepared with real and natural ingredients, vegetables, grains and proteins."

c. "Our Super Duper Chicken Nuggets, for example, are prepared with whole grain breading for a crisp, golden outside and deliciously tender white meat chicken on the inside. Psst…we even added pureed vegetables into our chicken nuggets which make them Super Duper. The kids will love it!"

d. "Simply Nutritious. . . Excellent Source of Protein, 11g Whole Grain per Serving, Pureed Veggies, 40% Less Sodium than the Leading Brand

of Breaded Chicken Nuggets, 73% Less Fat than the Leading Brand of Breaded Chicken Nuggets"

e. "Made with real ingredients . . . Chicken Humanely Raised without Antibiotics, Whole Grain Breading, Cauliflower, Onions"

f. "PACKED WITH GOODNESS," "EXCELLENT SOURCE OF PROTEIN," "Made with White Meat Chicken Patties + Pureed Vegetables, in a Whole Grain Breading," "ALL NATURAL," "11g Whole Grain per Serving," "40% Less Sodium [and] 73% Less Fat than the leading brand of breaded chicken nuggets"

g. "Sodium content reduced from 417mg to 250mg in the fat content reduced from 15g to 4g per serving"

h. "Whole Grain 11grams per serving"

i. "The one thing we're sneaky about? Vegetables"

j. "Fresh-Frozen Goodness" and

k. "Freezing is one of the best ways to preserve nutrients and flavors while extending the shelf life of food. That's why Kidfresh meals are frozen immediately after being cooked, so that they keep all the good stuff for a long time!"

148. When deciding to purchase the Kidfresh Wagon Wheels Mac + Cheese, plaintiff read and relied on the following claims, or substantially similar claims that conveyed the same health message, that were contained on Kidfresh high-fat frozen food product labels:

a. "Goodness for kids is what we are all about"

b. "At Kidfresh, we are just like you: we want to have kids' meals without all these artificial ingredients that you can't even pronounce! As a dad, I made it my mission to create more options for **healthy and easy kids' meals** – ones that **children love to eat and parents can trust**. So, with our chef and nutritionist, we created **Kidfresh, a healthy twist on kids' favorite foods**, simply prepared with real and natural ingredients, vegetables, grains and proteins."

c. "Our **Wagon Wheels Mac & Cheese**, for example, is made with real grated cheddar + stringy mozzarella cheese! **Psst…we even added pureed carrots into the cheese sauce.** Don't worry, they won't even notice, they'll love it! Also, we carefully select and **use only natural and non-GMO**

ingredients for our products. On top of that, we work with accredited third-party labs to ensure that our stringent quality standards are met."

d. "PACKED WITH GOODNESS," "EXCELLENT SOURCE OF PROTEIN," "EXCELLENT SOURCE OF CALCIUM AND VITAMIN A," "ALL NATURAL with Hidden Veggies," and "real grated cheddar + creamy cheese sauce with hidden vegetables."

e. "Simply Nutritious . . . Hidden Veggies, Excellent Source of Protein, Excellent Source of Calcium and Vitamin A, 0g Trans Fat, No Artificial Flavors, Colors or Preservatives," and "The one thing we're sneaky about? Vegetables."

f. "Freezing is one of the best ways to preserve nutrients and flavors while extending the shelf life of food. That's why Kidfresh meals are frozen immediately after being cooked, so that they keep all the good stuff for a long time!"

149. Based on these representations, plaintiff believed the Kidfresh high-fat frozen food products were healthy.

150. When purchasing Kidfresh high-fat frozen food products, plaintiff was seeking products with the qualities described on the labels, namely, healthy and wholesome frozen foods, the consumption of which would not increase her or her family's risk of CHD, stroke, and other morbidity.

151. These representations, however, were false and misleading, and had the capacity, tendency, and likelihood to confuse or confound plaintiff and other consumers acting reasonably (including the putative Class Members) because, as described in detail herein, the Kidfresh high-fat frozen food products are not healthy, but instead their consumption increases the risk of CHD, stroke, and other morbidity.

152. Plaintiff is not a nutritionist, food expert, or food scientist, but rather a lay consumer who did not have the specialized knowledge that Kidfresh had regarding the nutrients present in its high-fat frozen food products.

153. Plaintiff acted reasonably in relying on the health and nutrition claims that Kidfresh intentionally placed on the high-fat frozen foods' packaging with the intent to induce average consumers into purchasing the products.

154. The Kidfresh high-fat frozen food products cost more than similar products without misleading labeling, and/or would have cost less in the marketplace (i.e., would have demanded a lower price) absent the false and misleading statements complained of herein.

155. By using the challenged but misleading health and wellness claims, defendant was able to generate a marketplace demand, and obtain a market share through sales of the Kidfresh products, which would not have occurred absent the misleading claims.

156. Plaintiff paid more for the Kidfresh high-fat frozen food products, and would only have been willing to pay less, or unwilling to purchase the products at all, absent the false and misleading labeling complained of herein.

157. For these reasons, the Kidfresh high-fat frozen food products were worth less than what plaintiff paid for them.

158. Instead of receiving products that had actual healthful qualities, the products that plaintiff and the Class received were not healthy, but rather their consumption causes increased risk of CHD, stroke, and other morbidity.

159. Plaintiff would not have purchased the Kidfresh high-fat frozen food products if she knew the products were misbranded pursuant to New York, California, and federal FDA regulations, or that the labeling claims were false and misleading.

160. Plaintiff lost money as a result of Kidfresh's deceptive claims and practices in that she did not receive what she paid for when purchasing the Kidfresh high-fat frozen foods.

161. Plaintiff detrimentally altered her position and suffered damages in an amount equal to the amount she paid for the products.

162. The senior officers and directors of Kidfresh allowed the Kidfresh high-fat frozen foods to be sold with full knowledge or reckless disregard that the challenged claims are fraudulent, unlawful, and misleading.

CLASS ACTION ALLEGATIONS

163. While reserving the right to revise or amend the class definition at the class certification stage, pursuant to Federal Rule of Civil Procedure 23, plaintiff seeks to represent

a class of all persons in the United States who purchased one or more of the Kidfresh High-Fat Frozen Foods for personal, family, or household use, and not for resale.

164. Pursuant to Federal Rule of Civil Procedure 23, plaintiff further seeks to represent a subclass of all persons in California who purchased one or more of the Kidfresh High-Fat Frozen Foods for personal, family, or household use, and not for resale.

165. The members in the proposed class and subclass are so numerous that individual joinder of all members is impracticable, and the disposition of the claims of all class members in a single action will provide substantial benefits to the parties and Court.

166. Questions of law and fact common to plaintiff and the classes include, but are not limited to the following:

a. whether Kidfresh communicated a message regarding healthfulness of the products through their packaging and advertising;

b. whether that message was material, or likely to be material to a reasonable consumer;

c. whether the challenged claims discussed above are false, misleading, or reasonably likely to deceive a reasonable consumer, because of the high total and saturated fat content of the products;

d. whether Kidfresh's conduct violates public policy;

e. whether Kidfresh's conduct violates state or federal food statutes or regulations;

f. the proper amount of damages, including punitive damages;

g. the proper amount of restitution or disgorgement;

h. the proper injunctive relief, including a corrective advertising campaign; and

i. the proper amount of attorneys' fees.

167. Plaintiff's claims are typical of Class Members' claims because they are based on the same underlying facts, events, and circumstances relating to Kidfresh's conduct. Specifically, all Class Members, including plaintiff, were subjected to the same misleading

and deceptive conduct when they purchased the challenged products, and suffered economic injury because the products were and are misrepresented. Absent Kidfresh's business practice of deceptively and unlawfully labeling its high-fat frozen foods, plaintiff and Class Members would not have purchased the products.

168. Plaintiff will fairly and adequately represent and protect the interests of the Class, has no interests incompatible with the interests of the Class, and has retained counsel competent and experienced in class action litigation, and specifically in litigation involving the false and misleading advertising of foods.

169. Class treatment is superior to other options for resolution of the controversy because the relief sought for each Class Member is small such that, absent representative litigation, it would be infeasible for Class Members to redress the wrongs done to them.

170. Questions of law and fact common to the Class predominate over any questions affecting only individual Class Members.

171. Defendant has acted on grounds applicable to the Class, thereby making appropriate final injunctive and declaratory relief concerning the Class as a whole.

172. As a result of the foregoing, class treatment is appropriate under Fed. R. Civ. P. 23(a), (b)(2), and (b)(3).

CAUSES OF ACTION

FIRST CAUSE OF ACTION

Unfair And Deceptive Business Practices, N.Y. Gen. Bus. L. § 349

(By the Nationwide Class)

173. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint as if fully set forth herein.

174. Kidfresh's conduct constitutes deceptive acts or practices or false advertising in the conduct of business, trade or commerce or on the furnishing of services in New York which affects the public interest under N.Y. Gen. Bus. L. § 349.

175. As alleged herein, by advertising, marketing, distributing, and selling the high-fat frozen foods to plaintiff and other class members with false or misleading claims and representations, Kidfresh engaged in, and continues to engage in, deceptive acts and practices.

176. As alleged herein, by misbranding the high-fat frozen foods, Kidfresh engaged in, and continues to engage in, unlawful and deceptive acts and practices.

177. Kidfresh's conduct was materially misleading to plaintiff and the class. During the class period, Kidfresh carried out a plan, scheme and course of conduct which was consumer oriented.

178. As a direct and proximate result of Kidfresh's violation of N.Y. Gen. Bus. L. § 349, plaintiff and the class were injured and suffered damages.

179. The injuries to plaintiff and the class were foreseeable to Kidfresh and, thus Kidfresh's actions were unconscionable and unreasonable.

180. Kidfresh is liable for damages sustained by plaintiff and the class to the maximum extent allowable under N.Y. Gen. Bus. L. § 349.

181. Pursuant to N.Y. Gen. Bus. L. § 349(h), plaintiff and the class seek an Order enjoining Kidfresh from continuing to engage in unlawful acts or practices, false advertising, and any other acts prohibited by law, including those set forth in this Complaint.

SECOND CAUSE OF ACTION

False Advertising, N.Y. Gen. Bus. L. § 350

(By the Nationwide Class)

182. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint as if fully set forth herein.

183. Kidfresh has engaged and is engaging in consumer-oriented conduct which is deceptive or misleading in a material way, constituting false advertising in the conduct of any business, trade, or commerce, in violation of N.Y. Gen. Bus. L. § 350.

184. As a result of Kidfresh's false advertising, plaintiff and the class have suffered and continue to suffer substantial injury, including damages, which would not have occurred

but for the false and deceptive advertising, and which will continue to occur unless Kidfresh is permanently enjoined by this Court.

THIRD CAUSE OF ACTION

Negligent Misrepresentation

(By the Nationwide Class)

185. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint as if fully set forth herein.

186. Kidfresh misrepresented to plaintiff and the class the characteristics and benefits of the high-fat frozen foods, namely that the products are healthy, and omitted material facts concerning the true nature of the products.

187. Kidfresh owed a duty to plaintiff and the class to exercise reasonable care when issuing statements or disclosures regarding the high-fat frozen foods' characteristics and benefits.

188. Kidfresh's statements and disclosures regarding the characteristics and benefits of the high-fat frozen foods were likely to deceive plaintiff and the class.

189. Kidfresh's omissions of material information were likely to deceive plaintiff and the class in that, had Kidfresh not omitted such material information, the disclosure of that information would have resulted in plaintiff and the class acting differently, for example, not purchasing the high-fat frozen foods.

190. Kidfresh's claims have influenced or are likely to influence future decisions of consumers and the buying public. Plaintiff and the class, by purchasing the high-fat frozen foods, reasonably acted in reliance on the truth of Kidfresh's representations, and the absence of the material information that Kidfresh deceptively omitted.

191. As a direct and proximate result of plaintiff's and the class's reliance upon the representations made by Kidfresh, plaintiff and the class have sustained damages and ascertainable loss.

FOURTH CAUSE OF ACTION

Intentional Misrepresentation

(By the Nationwide Class)

192. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint as if fully set forth herein.

193. Kidfresh represented to the public, including to plaintiff and the class, that the high-fat frozen foods are healthy.

194. Kidfresh's representations were false and misleading.

195. At the time Kidfresh made statements or representations regarding the nature and qualities of the high-fat frozen foods, Kidfresh knew that the statements and representations were false and misleading.

196. Kidfresh made the misrepresentations alleged herein with the intention of inducing and persuading plaintiff and the class to purchase the high-fat frozen foods.

197. Kidfresh further withheld and omitted material information about the high-fat frozen foods with the intention of inducing and persuading plaintiff and the class to purchase the products.

198. Plaintiff and the class, by purchasing the high-fat frozen foods, reasonably relied on Kidfresh's false and misleading statements and misrepresentations, and on the absence of the material information that Kidfresh deceptively omitted.

199. As a direct and proximate result of Kidfresh's intentional misrepresentations and deceptive omissions, plaintiff and the class were induced to pay, and pay a premium for, the high-fat frozen foods.

200. Plaintiff and the class were damaged through their purchase and use of the high-fat frozen foods.

201. Plaintiff's and the class's reliance on Kidfresh's statements and representations of the nature and characteristics of the high-fat frozen foods was reasonable.

202. As a result, Kidfresh is guilty of malice, oppression, and fraud, and plaintiff and the class are therefore entitled to recover exemplary or punitive damages.

FIFTH CAUSE OF ACTION

Violation of California's Unfair Competition Law,

Cal. Bus. & Prof. Code §§ 17200 *et seq.*

(By the California Subclass)

203. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint as if fully set forth herein.

204. The UCL prohibits any "unlawful, unfair or fraudulent business act or practice," Cal. Bus. & Prof. Code § 17200.

205. The acts, omissions, misrepresentations, practices, and non-disclosures of Kidfresh as alleged herein constitute business acts and practices.

Fraudulent

206. A statement or practice is fraudulent under the UCL if it is likely to deceive the public, applying an objective reasonable consumer test.

207. As set forth herein, Kidfresh's claims relating to the products are false or misleading, and likely to deceive reasonable consumers and the public.

Unlawful

208. The acts alleged herein are "unlawful" under the UCL in that they violate at least the following laws:

- The False Advertising Law, Cal. Bus. & Prof. Code §§ 17500 et seq.;
- The Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750 et seq.;
- The Federal Food, Drug, and Cosmetic Act, 21 U.S.C. §§ 301 et seq.; and
- The California Sherman Food, Drug, and Cosmetic Law, Cal. Health & Safety Code §§ 110100 et seq.

Unfair

209. Kidfresh's conduct with respect to the labeling, advertising, and sale of the high-fat frozen foods was unfair because Kidfresh's conduct was immoral, unethical, unscrupulous, or substantially injurious to consumers, and the utility of its conduct, if any, does not outweigh the gravity of the harm to its victims.

210. Kidfresh's conduct with respect to the labeling, advertising, and sale of the high-fat frozen foods was and is also unfair because it violates public policy as declared by specific constitutional, statutory or regulatory provisions, including but not necessarily limited to the False Advertising Law, portions of the Federal Food, Drug, and Cosmetic Act, and portions of the California Sherman Food, Drug, and Cosmetic Law.

211. Kidfresh's conduct with respect to the labeling, advertising, and sale of the high-fat frozen foods was and is also unfair because the consumer injury was substantial, not outweighed by benefits to consumers or competition, and not one consumers themselves could reasonably have avoided.

212. Kidfresh profited from the sale of the falsely, deceptively, and unlawfully advertised Kidfresh high-fat frozen foods to unwary consumers.

213. Plaintiff and Class Members are likely to continue to be damaged by Kidfresh's deceptive trade practices, because Kidfresh continues to disseminate misleading information. Thus, injunctive relief enjoining Kidfresh's deceptive practices is proper.

214. Kidfresh's conduct caused and continues to cause substantial injury to plaintiff and other Class Members. Plaintiff has suffered injury in fact as a result of Kidfresh's unlawful conduct.

215. In accordance with Bus. & Prof. Code § 17203, plaintiff seeks an order enjoining Kidfresh from continuing to conduct business through unlawful, unfair, and/or fraudulent acts and practices, and to commence a corrective advertising campaign.

216. Plaintiff and the Class also seek an order for the restitution of all monies from the sale of the Kidfresh high-fat frozen foods , which were unjustly acquired through acts of unlawful competition.

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SIXTH CAUSE OF ACTION

Violations of California's False Advertising Law,

Cal. Bus. & Prof. Code §§ 17500 *et seq.*

(By the California Subclass)

217. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint as if fully set forth herein.

218. The FAL provides that "[i]t is unlawful for any person, firm, corporation or association, or any employee thereof with intent directly or indirectly to dispose of real or personal property or to perform services" to disseminate any statement "which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading." Cal. Bus. & Prof. Code § 17500.

219. It is also unlawful under the FAL to disseminate statements concerning property or services that are "untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading." *Id*.

220. As alleged herein, the advertisements, labeling, policies, acts, and practices of Kidfresh relating to the products misled consumers acting reasonably as to the healthfulness of the products.

221. Plaintiff suffered injury in fact as a result of Kidfresh's actions as set forth herein because plaintiff purchased the Kidfresh high-fat frozen foods in reliance on Kidfresh's false and misleading marketing claims stating or suggesting that the products, among other things, are healthy.

222. Kidfresh's business practices as alleged herein constitute unfair, deceptive, untrue, and misleading advertising pursuant to the FAL because Kidfresh has advertised the products in a manner that is untrue and misleading, which Kidfresh knew or reasonably should have known, and omitted material information from the products' advertising.

223. Kidfresh profited from the sale of the falsely and deceptively advertised products to unwary consumers.

224. As a result, plaintiff, the Class, and the general public are entitled to injunctive and equitable relief, restitution, and an order for the disgorgement of the funds by which Kidfresh was unjustly enriched.

225. Pursuant to Cal. Bus. & Prof. Code § 17535, plaintiff, on behalf of herself and the Class, seeks an order enjoining Kidfresh from continuing to engage in deceptive business practices, false advertising, and any other act prohibited by law, including those set forth in this Complaint.

SEVENTH CAUSE OF ACTION

Violations of California's Consumers Legal Remedies Act,

Cal. Civ. Code §§ 1750 *et seq.*

(By the California Subclass)

226. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint as if fully set forth herein.

227. The CLRA prohibits deceptive practices in connection with the conduct of a business that provides goods, property, or services primarily for personal, family, or household purposes.

228. Kidfresh's policies, acts, and practices were designed to, and did, result in the purchase and use of the products primarily for personal, family, or household purposes by plaintiff and the Class and violated and continue to violate the following sections of the CLRA:

a. § 1770(a)(5): representing that goods have characteristics, uses, or benefits which they do not have;

b. § 1770(a)(7): representing that goods are of a particular standard, quality, or grade if they are of another;

c. § 1770(a)(9): advertising goods with intent not to sell them as advertised; and

d. § 1770(a)(16): representing the subject of a transaction has been supplied in accordance with a previous representation when it has not.

229. As a result, plaintiff and the California subclass have suffered irreparable harm and are entitled to restitution and injunctive relief.

230. In compliance with Civ. Code § 1782, on March 9, 2016, plaintiff sent written notice to Kidfresh of her claims, but Kidfresh failed to provide the remedial measures demanded within 30 days.

231. In addition to restitution and injunctive relief, plaintiff and the California subclass is entitled to actual and punitive damages, as well as attorneys' fees.

EIGHTH CAUSE OF ACTION

Breach of Express Warranty

(By the Nationwide Class)

232. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint as if fully set forth herein.

233. In selling the high-fat products to plaintiff and the class members, Kidfresh made an affirmation of fact or promise that the products were "healthy," as well as related affirmations of fact, promises, and descriptions, which formed part of the basis of the bargain. Kidfresh thus expressly warranted the goods sold.

234. The high-fat products do not live up to these affirmations of fact, promises, and descriptions, causing the breach of warranty when plaintiff and other consumers purchased them.

235. That breach actually and proximately caused injury in the form of the lost purchase price that plaintiff and the Class paid for the high-fat products.

236. Plaintiff, on behalf of herself and the class, seeks actual damages for Kidfresh's breach of warranty.

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NINTH CAUSE OF ACTION

Breach of Express Warranty,

CAL. COM. CODE § 2313

(By the California Subclass)

237. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint as if fully set forth herein.

238. Through the Kidfresh high-fat products' labels, Kidfresh made affirmations of fact or promises, or description of goods, which were "part of the basis of the bargain," in that plaintiff and the California subclass purchased the products in reasonable reliance on those statements. Cal. Com. Code § 2313(1).

239. Kidfresh breached its express warranties by selling the high-fat products, which are not healthy, but rather the consumption of which negatively affect cholesterol levels, increasing risk of CHD and stroke.

240. That breach actually and proximately caused injury in the form of the lost purchase price that plaintiff and the California subclass paid for the Kidfresh high-fat products.

TENTH CAUSE OF ACTION

Breach of Implied Warranty of Merchantability,

Cal. Com. Code § 2314

(By the California Subclass)

241. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint as if fully set forth herein.

242. Kidfresh, through its acts and omissions set forth herein, in the sale, marketing, and promotion of the Kidfresh high-fat frozen food products, made representations to plaintiff and the California subclass that, among other things, the products are healthy.

243. Plaintiff and the California Subclass bought the Kidfresh high-fat frozen food products manufactured, advertised, and sold by Kidfresh, as described herein.

244. Kidfresh is a merchant with respect to the goods of this kind which were sold to plaintiff and the California Subclass, and there was, in the sale to plaintiff and other consumers, an implied warranty that those goods were merchantable.

245. However, Kidfresh breached that implied warranty in that the Kidfresh high-fat frozen food products are not healthy, as set forth in detail herein.

246. As an actual and proximate result of Kidfresh's conduct, plaintiff and the California Subclass did not receive goods as impliedly warranted by Kidfresh to be merchantable in that they did not conform to promises and affirmations made on the containers or labels of the goods.

247. Plaintiff and California Subclass have sustained damages as a proximate result of the foregoing breach of implied warranty in the amount of the products' purchase price.

ELEVENTH CAUSE OF ACTION

Unjust Enrichment

(By the Nationwide Class)

248. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint as if fully set forth herein.

249. By means of its material misconduct as set forth herein, Kidfresh induced plaintiff and the class to purchase the high-fat products at a premium to their actual value, and to similar products that do not make health claims.

250. As a consequence of this misconduct, plaintiff and the class spent money they would not otherwise have been willing to spend absent the misrepresentations and misconduct by Kidfresh.

251. By virtue of the foregoing, Kidfresh has been unjustly enriched in an amount to be determined with respect to plaintiff and the class, to the extent that Kidfresh received and kept revenues collected from the high-fat frozen foods, which Kidfresh would not have received absent its misconduct.

TWELFTH CAUSE OF ACTION

Restitution

(By the Nationwide Class)

252. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint as if fully set forth herein.

253. By virtue of deceptive and unlawful business practices, Kidfresh charged and received payment for the high-fat frozen food products. Kidfresh should not be permitted to retain those payments in equity and good conscience, as those payments were obtained in contravention of the law. To permit Kidfresh to retain those payments would wrongfully confer a benefit upon Kidfresh at the expense of plaintiff and the class.

254. Under the circumstances, it would be inequitable for Kidfresh to retain these ill-gotten benefits, and therefore restitution to plaintiff and the class is warranted.

PRAYER FOR RELIEF

255. Wherefore, plaintiff, on behalf of herself, all others similarly situated, and the general public, prays for judgment against Kidfresh as to each and every cause of action, including:

A. An Order declaring this action to be a proper class action, appointing plaintiffs and their counsel to represent the class, and requiring Kidfresh to bear the costs of class notice;

B. An Order enjoining Kidfresh from selling the high-fat frozen foods in a false or misleading manner, or in any manner that violates FDCA and other federal and state regulations including those concerning labeling;

C. An Order requiring Kidfresh to engage in a corrective advertising campaign and engage in any further necessary affirmative injunctive relief, such as recalling existing high-fat frozen food products;

D. An Order awarding declaratory relief, and any further retrospective or prospective injunctive relief permitted by law or equity, including enjoining Kidfresh

from continuing the unlawful practices alleged herein, and injunctive relief to remedy Kidfresh's past conduct;

E. An Order requiring Kidfresh to pay to the nationwide class restitution, including the California subclass members, to restore all funds acquired by means of any act or practice declared by this Court to be an unlawful, unfair, or fraudulent business act or practice, untrue or misleading advertising, or a violation of the UCL, FAL or CLRA, plus pre-and post-judgment interest thereon;

F. An Order requiring Kidfresh to disgorge or return all monies, revenues, and profits obtained by means of any wrongful or unlawful act or practice;

G. An Order requiring Kidfresh to pay all actual and statutory damages permitted under the causes of action alleged herein;

H. An Order requiring Kidfresh to pay punitive damages on any causes of action so allowable if plaintiff proves that Kidfresh's conduct was knowing, willful, malicious, oppressive, or reckless;

I. An Order awarding attorneys' fees and costs to plaintiff and the classes;

J. An Order providing for all other such equitable relief as may be just and proper.

JURY DEMAND

Plaintiff hereby demands a trial by jury on all issues so triable.

Dated: April 21, 2016

/s/ Thomas A. Canova

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